134-45

EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1262.

THE RICHMOND AND DANVILLE RAILROAD COMPANY, APPELLANT,

vs.

NICHOLAS THOURON, FREDERICK J. BURT, TRADING AS FREDERICK BURT & CO.; WILLIAM J. BARR, EDMUND ALLEN, AND EDMUND P. DWIGHT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

RECORD FILED OCTOBER 1, 1889.

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In the Chancery Court, Knoxville, Tennessee.

NICHOLAS THOURON *et al.*
vs.
EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Bill and Exhibits.

Ingersoll & Peyton, Dickenson & Frazer, Charles M. Da Costa, Samuel Dickson, for plaintiffs.

Filed Apr. 1, 1889.

H. H. TAYLOR,
U. S. Cir. C't Clk.

In the Chancery Court, Knoxville, Tenn.

NICHOLAS THOURON, CHARLES SLIGO de Pothonier, Trading as C. Sligo de Pothonier & Co.; Frederick J. Burt, Trading as Frederick Burt & Co.; William J. Barr, Plaintiffs, — Non-residents of Tennessee.

against

EAST TENNESSEE, VIRGINIA AND Georgia Railway Company, a Corporation Existing Under the Laws of the States of Tennessee and Georgia; and Richmond and Danville Railroad Campany, and Richmond and West Point Terminal Railway and Warehouse Company, Corporations Existing Under the Laws of the State of Virginia; John H. Inman, Samuel Thomas, John G. Moore, Emanuel Lehmen, Calvin S. Brice, C. M. McGhee, T. M. Logan, George F. Stone, George S. Scott, John A. Rutherford, James Swann, James B. Pace, Simon Wormser, Edward Lauterbach, John H. Hall, John C. Calhoun, W. S. Chisholm, J. O. Moss, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., George Coppell, Thomas P. Fowler, James E. Granniss, H. C. Fahnestock, J. C. Mahen, John S. Barbour, Samuel N. Inman, Defendants.

Having its principal office at Knoxville, in Knox county, Tennessee.

All of whom are non-residents of Tennessee.

To the Honorable Henry R. Gibson, chancellor, &c.:

The bill of complaint of Nicholas Thouron, Charles Sligo de Pothonier, trading as C. Sligo de Pothonier & Co.; Frederick J. Burt, trading as Frederick Burt & Co., and William J. Barr, against the East Tennessee, Virginia and Georgia Railway Company, a corporation existing under the laws of the States of Tennessee and Georgia, and the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, corporations existing under the laws of the State of Virginia, and John H. Inman, Samuel Thomas, John G. Moore, Emanuel Lehmen, Calvin S. Brice, C. M. McGhee, T. M. Logan, George F. Stone, George S. Scott, John A. Rutherford, James Swann, James B. Pace, Simon Wormser, Edward Lauterbach, John H. Hall, John C. Calhoun, W. S. Chisholm, J. O. Moss, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., George Coppell, Thomas P. Fowler, James E. Granniss, H. C. Fahnestock, J. C. Mahen, John S. Barbour, Samuel N. Inman.

Your orators complain and say:

First. That your orators are stockholders in the said East Tennessee, Virginia and Georgia Railway Company as follows: Nicholas Thouron is the owner of seven hundred shares of the common stock; Charles Sligo de Pothonier, trading as aforesaid, is the owner of two thousand shares of the second preferred stock; Frederick J. Burt, trading as aforesaid, is the owner of two hundred shares of the second preferred stock and one hundred shares of the common stock, and William J. Barr is the owner of two hundred shares of the common stock, and they all have been the owners thereof for some months last past.

And they file this bill on their own behalf and on behalf of all other stockholders in the East Tennessee, Virginia and Georgia Railway Company who are similarly situated and who may choose to come in and share in the benefit and expense of this suit.

Second. That the East Tennessee, Virginia and Georgia Railway Company is a corporation of the States of Tennessee and Georgia, and is vested with, owns, and operates the railroad property and franchises late of the East Tennessee, Virginia and Georgia Railroad Company, a corporation created by the consolidation in the year 1869 of the East Tennessee and Virginia Railroad Company and the East Tennessee and Georgia Railroad Company, corporations of the State of Tennessee, which consolidated company, subsequent to its organization, acquired by purchase the railroad property, rights, and franchises of the Cincinnati and Georgia Railroad Company and the Macon and Brunswick Railroad Company, corporations of the State of Georgia, and certain other additional railroad lines, rights, privileges, and franchises in the States of Georgia, Alabama, and Mississippi, and the line of railroad so owned and operated by the East Tennessee, Virginia and Georgia Railroad Company extends from Bristol, Tennessee, via Knoxville, Tennessee, to Chattanooga, Tennessee, branching from Cleveland, Tennessee, to Rome,

Georgia, and thence extending in one direction through Selma, Alabama, to Meridian, Mississippi, and in another direction through Atlanta and Macon, Georgia, to Brunswick, Georgia, with a branch from Morristown, Tennessee, to a point on the line of the States of Tennessee and North Carolina, known as Paint Rock, North Carolina, and other branches, and by means of its ownership of a majority of the capital stock of the Memphis and Charleston Railroad Company, the Knoxville and Ohio Railroad Company and the Mobile and Birmingham Railway Company, it controls the said companies and the operations of the several lines of railroads of the said companies, to wit, the Memphis and Charleston Railroad, extending from Stevenson, Alabama, to Memphis, Tennessee; the Knoxville and Ohio railroad, extending from Knoxville, Tennessee, to Jellico, Tennessee, and the Mobile and Birmingham railroad, extending from Selma, Alabama, to Mobile, Alabama, its connection between Stevenson, Alabama, and Chattanooga, Tennessee, being over the Nashville, Chattanooga and St. Louis railway, by means of a traffic and running arrangement which enables the said Memphis and Charleston Railroad Company to transport by its own engines and cars its traffic of all descriptions over said portion of the Nashville, Chattanooga and St. Louis railway, in the same manner as if the said portion were owned by it; and the said several lines of railroad so owned, operated, and controlled by the East Tennessee, Virginia and Georgia Railway Company constitute a system extending in a general northeastwardly and southwestwardly direction, and engaged in the transportation of freight and passengers to and from the New England and Middle States and Virginia, and the ports of the North Atlantic seaboard, through the State of Tennessee, to and from points in the State of Tennessee, the ports of the South Atlantic seaboard, the States of Georgia, Alabama, Mississippi, Florida, and Louisiana, the Gulf of Mexico and the Mississippi river, and numerous points and places westwardly thereof.

Third. That the railroad of the East Tennessee, Virginia and Georgia Railway Company, extending from Rome, Georgia, to Macon, Georgia, was constructed and is operated under the charter of the Cincinnati and Georgia Railroad Company, a corporation of the State of Georgia, incorporated by an act of Assembly of the State of Georgia, approved September 2d, 1881, entitled "An act to incorporate the Cincinnati and Georgia Railroad Company, and to define its rights, powers, and privileges, and for other purposes," by which charter of the Cincinnati and Georgia Railroad Company it is, *inter alia*, provided:

"Section XVIII. No railroad or express company or companies, or a combination of either controlling or running a competing line of railroad either as owners, lessees, or otherwise, nor any individual or individuals having a controlling interest in any such competing company or companies shall be or become at any time owner or owners of a controlling interest in the said railroad herein chartered, and should such company or companies, individual or individuals, at any time become so interested, then the charter herein granted shall be *ipso facto* null and void, and the franchises, powers, and

privileges thereof shall cease and determine absolutely, and it shall be the duty of the attorney general of this State instanter to commence proceedings in any court of this State having jurisdiction of the case, to forfeit the same."

Fourth. That the railroad of the East Tennessee, Virginia and Georgia Railway Company, extending from Macon to Brunswick, Georgia, was constructed by the Macon and Brunswick Railroad Company, a corporation chartered by the State of Georgia on or about the first day of March, 1856, and is owned and operated by the East Tennessee, Virginia and Georgia Railway Company under and by virtue of the said charter of the Macon and Brunswick Railroad Company, and the several acts supplementary thereto and amendatory thereof, and also by virtue of the said charter of the Cincinnati and Georgia Railroad Company, and the several acts supplementary thereto and amendatory thereof.

Fifth. That the railroad property, rights, and franchises of the Cincinnati and Georgia Railroad Company were purchased and acquired by the East Tennessee, Virginia and Georgia Railroad Company aforesaid on or about the first day of November, 1881, and were conveyed by deed of conveyance to the East Tennessee, Virginia and Georgia Railroad Company on or about the first day of November, 1881, and the railroad, property, rights, and franchises of the Macon and Brunswick Railroad Company were purchased and acquired by the said East Tennessee, Virginia and Georgia Railroad Company on or about the fourteenth day of June, 1881, and were conveyed by deed of conveyance to the East Tennessee, Virginia and Georgia Railroad Company on or about the fourteenth day of June 1881, and the said East Tennessee, Virginia and Georgia Railroad Company became, upon being vested with the property, rights, and franchises of the said Georgia corporations as aforesaid, a domestic corporation of the State of Georgia, as to the railroad property, rights, and franchises, including its railroad from Rome, Georgia, to Brunswick, Georgia, acquired by it from the said two corporations.

Sixth. That the East Tennessee, Virginia, and Georgia Railway Company is a corporation organized on or about the thirtieth day of June, 1886, by the purchase of the railroad property and franchises of East Tennessee, Virginia and Georgia Railroad Company at the judicial sale thereof on the 25th of May, 1886, under the decree of the United States circuit court for the eastern district of Tennessee, in the suit of the Central Trust Company of New York against the East Tennessee, Virginia, and Georgia Railroad Company, which decree of sale was adopted and confirmed by the circuit courts of the United States for the northern district of Georgia, the southern district of Georgia, the northern district of Alabama, the middle district of Alabama, and the southern district of Mississippi, and the president and board of directors of the said East Tennessee, Virginia and Georgia Railway Company, on or about the first day of July, 1886, made and signed a certificate thereof and filed the same in the office of the secretary of state of the State of Tennessee, a true copy of which certificate is hereto

annexed, marked "Exhibit A," and made part hereof, the railroad property and franchises of the East Tennessee, Virginia and Georgia Railroad Company having been, on or about the twenty-eighth day of June, 1886, conveyed to and vested in the said purchasers thereof under a deed of conveyance from William Rule, special master in chancery, to Frederick P. Olcott, Charles M. McGhee, Frederick D. Tappen, George Warren Smith, and Edward W. Corlies, a true copy of which deed of conveyance is hereto annexed, marked "Exhibit B," and made part hereof.

Seventh. That the East Tennessee, Virginia and Georgia Railroad Company has been vested with, claims to own, and operates under the sale and conveyance aforesaid, the railroads, rights, properties, and franchises, powers, rights, and privileges in the State of Georgia derived by the East Tennessee, Virginia and Georgia Railroad Company from the Cincinnati and Georgia Railroad Company and the Macon and Brunswick Railroad Company; that the East Tennessee, Virginia and Georgia Railway Company, on or about July 1st, 1886, assumed the control and operation of, and still controls and operates, said railroads, rights, properties, and franchises, powers, rights, and privileges derived from the Macon and Brunswick Railroad Company and the Cincinnati and Georgia Railroad Company under the charters, franchises, and powers of the said companies in the State of Georgia, and thereby has become and is a domestic corporation of the State of Georgia, and for all purposes of its business and operations in the State of Georgia is to be treated as a coporation under the laws thereof.

Eighth. That the Richmond and Danville Railroad Company is a corporation of the State of Virginia, and operates and controls as owner or lessee of the various portions thereof a line — railroad extending from West Point and Richmond, Virginia, via Danville, Virginia, Greensboro, Salisbury, and Charlotte, North Carolina, to Atlanta, in the State of Georgia, together with certain connecting, lateral, and branch lines connected with its said line of railroad, among others the Western North Carolina railroad, from Salisbury, North Carolina, to Paint Rock, North Carolina, the Virginia Midland railroad, from Alexandria, Virginia, to Danville, Virginia; and likewise owns and operates the Baltimore and Chesapeake Steamboat Company, running a line of steamers between Baltimore, Maryland (via Chesapeake Bay and York river), and West Point, Virginia, establishing thereby direct connection between Baltimore and all points on or reached by said Richmond and Danville railroad system; and, by a traffic contract with the Georgia Pacific Railway Company, owning and operating a line of railroad from Atlanta, Georgia, westward into and through certain portions of the States of Georgia, Alabama, and Mississippi, the line of the Georgia Pacific Railway Company is controlled and operated in the interest of the Richmond and Danville Railroad Company for all traffic from or to any points on or beyond the line of the Georgia Pacific Railway Company and destined to or from any points north or east of Atlanta, Georgia; and the Richmond and Danville Railroad Company, with its numerous branches and the lines operated

and con*con*trolled by it, constitutes a system extending in a general northeastwardly and southwestwardly direction and is engaged in the transportation of freight and passengers to and from the New England and Middle States and Virginia, and the ports of the North Atlantic seaboard to and from points in the State of Tennessee, the ports of the South Atlantic seaboard, the States of Georgia, Alabama, Mississippi, Florida, and Louisiana; the Gulf of Mexico and the Mississippi river, and numerous points and places westwardly thereof.

Ninth. That the Richmond and West Point Terminal Railway and Warehouse Company is a corporation created and existing under the laws of the State of Virginia, with power to construct, equip, and operate and to unite and consolidate with certain railroads in the State of Virginia, and with authority to acquire the stock and bonds of railroad companies in the States of North Carolina, South Carolina, Tennessee, Kentucky, Georgia, Alabama, Mississippi, and other States, as will more fully appear by reference to extracts from its charter annexed hereto as "Exhibit C;" and the said Richmond and West Point Terminal Railway and Warehouse Company owns and holds a majority of the capital stock of the Richmond and Danville Railroad Company, and thereby elects the board of directors of said company, and by virtue of said ownership and through its nominees elected to the board of directors of said company and constituting a majority of said board controls said Richmond and Danville Railroad Company.

Tenth. That the Richmond and West Point Terminal Railway and Warehouse Company, in addition to its stock ownership in and control of the Richmond and Danville Railroad Company as aforesaid, in like manner owns and controls, and either directly or indirectly through the Richmond and Danville Railroad Company, the Richmond and Mecklenburg railroad, from Keysville, Virginia, to Clarksville, Virginia; the Northeastern railroad of Georgia, from Athens to Lula, Georgia, and from Rabun Gap to Tallulah, Georgia; the Asheville and Spartanburg railroad, from Asheville, North Carolina, to Spartanburg, South Carolina; the Statesville and Western railroad, from Statesville, North Carolina, to Taylorsville, North Carolina; the Knoxville and Augusta railroad, from Knoxville, Tennessee, to Maryville, Tennessee; the Oxford and Henderson railroad, from Oxford, North Carolina, to Henderson, North Carolina, thirteen miles, and the Georgia Pacific railway, extending from Atlanta, Georgia, to Starkville, Mississippi, and from Greenville, Mississippi, to Johnsonville, Mississippi, with its branches; and the Richmond and West Point Terminal Railway and Warehouse Company also owns and holds a majority of the capital stock of the following-named companies, to wit: The Virginia Midland Railroad Company, the Western North Carolina Railroad Company, the Charlotte, Columbia and Augusta Railroad Company, the Columbia and Greenville Railroad Company, the Washington, Ohio and Western Railroad Company, and the Northeastern Railroad of Georgia, whose roads are operated by contract, lease, or otherwise by the Richmond and Danville Railroad Company; and the Rich-

mond and West Point Terminal Railway and Warehouse Company, by its stock ownership aforesaid, elects the boards of directors of said companies, and by virtue of said ownership and through its nominees elected to the boards of directors of said companies and constituting a majority thereof controls the business and management of said companies.

All said railroads and lines, with their branches and leased lines, are operated and controlled as aforesaid by the officers, agents, and nominees of said Richmond and West Point Terminal Railway and Warehouse Company for its benefit and in its interest, and constitute the railroad system belonging to said Richmond and West Point Terminal Railway and Warehouse Company and known as the Piedmont Air Line.

The aggregate amount of the stocks and bonds owned by said Richmond and West Point Terminal Railway and Warehouse Company in said system of railroads controlled by it as aforesaid and constituting said Piedmont Air Line is more than $34,000,000.

Eleventh. That the lines of road so operated and controlled by the said East Tennessee, Virginia and Georgia Railway Company are competitors with the lines of roads so operated and controlled by the said Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company for the same business, to wit, the transportation of freight and passengers over the respective systems and their connections between Boston, Massachusetts; Providence, Rhode Island; New York, Philadelphia, Baltimore, Washington, D. C., Norfolk, Richmond, Petersburg, Lynchburg, Virginia, and all points beyond in the New England or Middle States reached through either of said named points, and the following-named points in the States of Tennessee, Georgia, Alabama, Mississippi, Florida, and Louisiana, viz: Chattanooga, Tennessee; Decatur, Alabama; Nashville, Tennessee; Corinth, Mississippi; Grand Junction, Tennessee; Memphis, Tennessee; Atlanta, Georgia; Rome, Georgia; Dalton, Georgia; Anniston, Alabama; Birmingham, Alabama; Montgomery, Alabama; Selma, Alabama; Meridian, Mississippi; Vicksburg, Mississippi; Mobile, Alabama; New Orleans, Louisiana; Macon, Georgia; Jesup, Georgia; Jacksonville, Florida, and all other points in the said States or beyond which are reached through either of the points or cities named.

Twelfth. That the Central Railroad and Banking Company of Georgia is a corporation of the State of Georgia and operates and controls, as owner or lessee, a line of railroad extending from Savannah, Georgia, via Millen, Gordon, Macon, Barnesville, and Griffen, Georgia, to Atlanta, Georgia, and also the Sylvania railroad, from Rockyford to Sylvania, Georgia, and the Louisville and the Wadley railroad, from Wadley, Georgia, to Louisville, Georgia, and the Wrightsville and Tennelle railroad, from Tennelle to Dublin, Georgia, and connecting at the said intermediate points between Savannah and Atlanta with the following lines of road, also owned, leased, or controlled and operated by the Central Railroad and Banking Company of Georgia, to wit: The Augusta and

Savannah railroad, from Millen to Augusta, Georgia; the Port Royal and Augusta railroad, from Augusta, Georgia, to Port Royal, South Carolina; the Port Royal and Western Carolina railroad, from Augusta, Georgia, to Anderson, Spartanburg, and Greenville, South Carolina; the Eatonton Branch railroad, from Gordon to Eatonton; the Southwestern railroad and branches from Macon to Columbus, Georgia, Eufala, Alabama, Columbus, Alabama, Fort Gaines, Georgia; the Montgomery and Eufala railway, from Eufala to Montgomery, Alabama; the Eufala and Clayton railway, from Eufala to Clayton, Alabama; the Eufala and East Alabama railway, from Clayton to Ozark, Alabama; the Buena Vista and Ellaville railway, from Americus to Columbus, Georgia; the Columbus and Western railway, from Columbus, Georgia to Birmingham, Alabama; the Mobile and Girard railroad, from Columbus, Georgia, to Troy, Alabama; the East Alabama railway, from Opelika to Roanoke, Alabama; the Columbus and Rome railway, from Columbus, Georgia, to Greenville, Georgia; the Talbotton Branch, from Geneva to Talbotton, Georgia; the Upson County railroad, from Barnesville to Thomaston; the Savannah, Griffin and North Alabama railroad, from Griffin to Carrolton, Georgia; the Atlanta and West Point railroad, from Atlanta to West Point, Georgia; the Western railroad of Alabama, from West Point, Georgia, to Selma, Alabama; the Georgia railroad and branches, from Atlanta to Augusta, Georgia Gainesville, Georgia, Athens, Georgia, Washington, Georgia, including the Macon and Augusta railroad from Camak, on said Georgia railroad, to Macon, Georgia, an aggregate mileage of about twenty-two hundred miles; and the Central Railroad and Banking Company of Georgia also controls the Ocean Steamship Company by ownership of all of the capital stock thereof and the line of steamers operated by the Ocean Steamship Company running between Savannah, Georgia, and New York city.

Thirteenth. That the Central Railroad and Banking Company of Georgia and the Richmond and Danville Railroad Company are competitors with each other for the same business, to wit, the transportation of freight and passengers over their respective systems and their connections between the Eastern cities of Baltimore, Philadelphia, New York, Providence, and Boston and all territory reached through said points by means of the steamship lines working between said points and the port of Savannah in connection with said Central Railroad and Banking Company of Georgia, and Augusta, Georgia; Spartanburg, Greenville, and Anderson, South Carolina; Athens, Gainesville, Atlanta, Georgia; Birmingham, Alabama, and all points beyond Atlanta and Birmingham and reached through them; and said companies are competitors with each other for traffic between Charleston, Columbia, Spartanburg, Greenville, and Anderson, South Carolina, and Atlanta and Birmingham, and all points beyond Atlanta and Birmingham and reached through them.

Fourteenth. That the Central Railroad and Banking Company of Georgia and the East Tennessee, Virginia and Georgia Railway Company are competitors with each other for the same business, to

wit, the transportation of freight and passengers over their respective systems and their connections between the Eastern cities of Baltimore, Philadelphia, New York, Providence, and Boston, and all territory reached through said points by means of the steamship lines working between said points and the port of Savannah in connection with said Central Railroad and Banking Company of Georgia, and Macon, Atlanta, Dalton, and Rome, Georgia; Chattanooga, Tennessee; Childersburg and Montgomery, Alabama; Selma, Alabama, and all points beyond and reached through said points; and the said companies are likewise competitors with each other for traffic between Macon, Georgia, and Atlanta, Georgia; Dalton, Georgia; Rome, Georgia; Chattanooga, Tennessee; Childersburg and Montgomery, Alabama; Selma, Alabama, and all points beyond and reached through said points; and the said companies are likewise competitors for traffic between Atlanta, Georgia, and Childersburg, Montgomery, and Selma, Alabama, and all points beyond reached through said points.

Fifteenth. That the entire capital stock of the Central Railroad and Banking Company of Georgia is $7,500,000, divided into seventy-five thousand shares of the par value of $100 each, of which capital stock the Georgia Company, a corporation organized under the laws of North Carolina, owns $4,000,000, or forty thousand shares, and the said Georgia Company, by such stock ownership, elects the board of directors of the Central Railroad and Banking Company of Georgia and controls and directs the policy and management of the Central Railroad and Banking Company of Georgia.

Sixteenth. That lately, for the purpose of terminating and preventing in the future the competition for business between the lines of the Richmond and Danville Railroad Company and the lines of the Central Railroad and Banking Company of Georgia and between the lines of the East Tennessee, Virginia and Georgia Railway Company and the lines of the Central Railroad and Banking Company of Georgia as aforesaid, the Richmond and Danville Railroad Company, either directly or through the Richmond and West Point Terminal Railway and Warehouse Company, has purchased or agreed to purchase all of the capital stock of the said Georgia Company, and thereby obtains the control and ownership of the majority of the capital stock of the Central Railroad and Banking Company of Georgia.

Seventeenth. That the boards of directors of the East Tennessee, Virginia and Georgia Railway Company and the Richmond and Danville Railroad Company lately, on or about seventeenth day of October, 1888, agreed upon a pretended lease of the railroad property and franchises of the East Tennessee, Virginia and Georgia Railway Company to the Richmond and Danville Railroad Company in order to destroy and prevent the competition for the same business in Tennessee, Georgia, and elsewhere between the lines operated or controlled by the said companies, and the possession and control of the lines operated and controlled by the East Tennessee, Virginia and Georgia Railway Company was, on the seven-

teenth day of October, 1888, delivered to the Richmond and Danville Railroad Company.

Eighteenth. That a majority of the directors of both the East Tennessee, Virginia and Georgia Railway Company and of the Richmond and Danville Railroad Company are directors of the Richmond and West Point Terminal Railway and Warehouse Company, and the said pretended lease has been agreed upon, and the possession of the lines of the East Tennessee, Virginia and Georgia Railway Company has been turned over to the Richmond and Danville Railroad Company without authority of the stockholders of the East Tennessee, Virginia and Georgia Railway Company any without any authority of law whatever; and the said Richmond and Danville Railroad Company has, under the said pretended lease, assumed the control and operation of the railroads and property of the East Tennessee, Virginia and Georgia Railway Company.

Nineteenth. That the board of directors of the Richmond and West Point Terminal Railway and Warehouse Company consists of—

John H. Inman,
Samuel Thomas,
John G. Moore,
Emanuel Lehmen,
Calvin S. Brice,
C. M. McGhee,
T. M. Logan,
George F. Stone,
George S. Scott,
Jno. A. Rutherford,
James Swann,
James B. Pace,
Simon Wormser,
Edward Lauterbach,
John H. Hall,
John C. Calhoun,
W. S. Chisholm,
J. O. Moss,

and the president of the said company is John. H. Inman, one of said directors; that the board of directors of the East Tennessee, Virginia and Georgia Railway Company consists of—

John H. Inman,
Samuel Thomas,
John G. Moore,
Emanuel Lehmen,
Calvin S. Brice,
C. M. McGhee,
T. M. Logan,
George S. Scott,
Alfred Sully,
John Greenough,
William L. Bull,
Richard Irvin, Jr.,
George Coppell,
Thomas P. Fowler,
James E. Granniss,

and the president of the said company is Samuel Thomas, one of said directors; that the board of directors of the Richmond and Danville Railroad Company consists of—

John H. Inman,
Samuel Thomas,
John G. Moore,
Emanuel Lehmen,
Calvin S. Brice,
C. M. McGhee,
George F. Stone,
George S. Scott,
Jno. A. Rutherford,
H. C. Fahnestock,
J. C. Mahen,
John S. Barbour,
Samuel N. Inman,

and the president of the said company is George S. Scott, one of said directors.

Twentieth. That "Exhibit D," hereto annexed, which your orators pray may be taken as a part hereof, is a true copy of the said pretended lease, and your orators aver and here charge that the said pretended lease of the railroad property and franchises of the East Tennessee, Virginia and Georgia Railway Company is without any authority of law, is contrary to public policy, and particularly is in violation of the provisions of an act of Assembly of the State of Tennessee entitled "An act to empower corporations to lease and dispose of their property and franchises," approved March 28, 1887, which provides that "this act shall not be so construed as to authorize any corporation of this or any other State to lease or purchase any railroad and line that is a competitor for the same business with any line already owned or under control, by lease or otherwise, or two lines of railway that are competitors for the same business in this State," and for these reasons the said lease is void and of no effect.

Twenty-first. That by the said act approved March 28th, 1887, it is provided that "any such leases or contracts when made by or under the direction of the boards of directors of the contracting corporations shall be authorized or approved by the vote of a majority in amount of the stock of the lessor corporation present or represented at a regular or called meeting of the stockholders of said corporation: And provided further, That sixty days' notice of such meeting be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of such meeting."

Twenty-second. That the said directors of the East Tennessee, Virginia and Georgia Railway Company had no power or authority to make, execute, and deliver a lease of the railroad and other property of the company and surrender possession of the property of the corporation thereunder, even in a case which would render such lease lawful and proper, without the precedent authority of a majority of the stockholders obtained at a meeting duly called after sixty days' notice of the time, place, and purpose of such meeting, as therein provided, and no meeting of stockholders has yet been held, though one has been called for December 22d, 1888, at the city of Knoxville, and that the transfer and delivery of the possession of the said railroad and other property to the said Richmond and Danville Railroad Company without the prior and precedent authority of the stockholders of the company was wholly without authority and unlawful and a surrender and betrayal of their duties and obligations as such directors; and your orators further aver and charge that the said Richmond and Danville Railroad Company should be enjoined and restrained, by injunction temporarily until hearing and perpetually thereafter, from maintaining the possession and from operating and using the said property, and that a receiver should be appointed to take charge, custody, and possession thereof until the stockholders of the company shall have had opportunity to elect other directors to properly represent and protect their interests.

Twenty-third. That the said directors, who united in authorizing the said lease and those associated with them, allege and claim that they control a majority of the shares of the said company and that they will be able to vote the requisite majority at a meeting to be held on the said twenty-second day of December, 1888, but your orators charge and aver that it will not be competent for the stockholders of the said company, at the said meeting, or for the directors to make and execute said lease, as the same would be in violation of the provisions of the said act of Assembly of the State of Tennessee of March 28th, 1887, hereinbefore referred to.

Twenty-fourth. That, under and by virtue of the terms of the organization of the East Tennessee, Virginia and Georgia Railway Company, the right to elect a majority of the board of directors is vested in the holders of its first preferred stock for five years, unless before that time the company should pay out of its net earnings five per cent. dividends on such preferred stock for two full successive years, and that only a dividend of four per cent. has been paid by the East Tennessee, Virginia and Georgia Railway Company for the year, 1887, upon its first preferred capital stock, and a dividend of five per cent. has lately been declared for the year 1888, on its first preferred stock, payable on the tenth day of December, 1888, and the first preferred stock will retain its right to elect a majority of the board of directors during the years 1888, 1889 and 1890, unless before the annual meeting of the stockholders in 1890 the company will pay out of its net earnings for two successive years full five per cent. dividends on said first preferred stock; that the Richmond and West Point Terminal Railway and Warehouse Company is the holder of sixty-five thousand shares, amounting to $6,500,000, of said first preferred stock, constituting a majority of its whole issue, and that thereby the said Richmond and West Point Terminal Railway and Warehouse Company has been enabled to control the elections and management of the said East Tennessee, Virginia and Georgia Railway Company, and it is not possible for the stockholders of the East Tennessee, Virginia and Georgia Railway Company, other than the said Richmond and West Point Terminal Railway and Warehouse Company, to make any change in the board of directors or to prevent the approval of the said pretended lease as against the control of so large a majority of the first preferred stock held and controlled by the lessee, which is thus virtually making a lease to itself; and your orators aver and charge that it is inequitable and unlawful for the said directors to make use of their control of the said East Tennessee, Virginia and Georgia Railway Company to settle the terms of a lease to the Richmond and West Point Terminal Railway and Warehouse Company, or for the said Richmond and West Point Terminal Railway and Warehouse Company to vote on the said shares at the meeting of stockholders called for the purpose of considering the said pretended lease upon the 22nd of December, 1888, as hereinbefore mentioned or at any other meeting held for the purpose of approving or authorizing a lease to said Richmond and Danville Railroad Company; that the power of electing a majority

of the board of directors of said East Tennessee, Virginia and Georgia Railway Company, conferred as aforesaid upon the holders of the first preferred stock in said company, was conferred upon the holders of said preferred stock only in trust, to be exercised in the interest and for the benefit of said East Tennessee, Virginia and Georgia Railway Company and all of its stockholders; and the holders of said first preferred stock have no legal or equitable right to use such voting powers in their own interest at the expense of the corporate interests of said East Tennessee, Virginia and Georgia Railway Company and its other stockholders. The attempt of said Richmond and West Point Terminal Railway and Warehouse Company to carry out the fraudulent purpose and design, hereinbefore set forth, by the exercise of the power conferred upon it as the holder of a majority in interest of said first preferred stock is therefore unauthorized and an abuse of said power and a fraud upon said East Tennessee, Virginia and Georgia Railway Company and these plaintiffs and the other stockholders thereof, excepting said Richmond and West Point Terminal Railway and Warehouse Company.

Twenty-fifth. That the provision in the organization of the East Tennessee, Virginia and Georgia Railway Company by which the power of electing the board of directors for five years was vested exclusively in the first preferred stock was only intended to give the board of directors elected by such vote the ordinary and usual powers of directors, and was not designed to empower and authorize them to negotiate a lease of all the property of the company, and the alleged agreement negotiated and purporting to have been executed by them is therefore in excess of their authority, unlawful, and void, and cannot be authorized or approved by the vote of a majority of the stockholders nor without their unanimous consent.

Twenty-sixth. That the only amount payable as a fixed rental under the terms of the said lease, as by reference thereto will appear, is the sum necessary to pay the fixed charges on the property and interest upon its bonded indebtedness and an annual dividend of five per cent. upon the first preferred stock, and, although the said lease further stipulates for a percentage of the gross earnings, it would be to the interest of the said Richmond and Danville Railroad Company to divert the business now carried over the line of the East Tennessee, Virginia and Georgia Railway to Bristol to the line of the Western North Carolina Railroad Company at Paint Rock, which is owned and controlled by the said Richmond and Danville Railroad Company, and as the said line would be longer and more expensively operated than the direct line of the Richmond and Danville Railroad Company, upon which it would receive all of the gross earnings instead of a share, it would be to its interest to divert all business coming from the States of Georgia and Alabama, and possibly all business originating in the State of Tennessee west of Chattanooga, over its own Piedmont line, so that the percentage of gross earnings of the East Tennessee, Virginia and Georgia Railway Company would, in the hands of the Richmond and Danville Railroad Company, never exceed or equal the

amount of the fixed rental, and the said lease is therefore exclusively in the interest of the first preferred stockholders, and the rights and interests of the remaining stockholders of the company, who constitute the great majority and who would have been able to elect the board of directors had it not been for the provision in the agreement for reorganization giving to the first preferred stockholders the right to elect a majority of the board for five years, are wholly disregarded and sacrificed by the provisions of said lease; and your orators therefore charge and aver that as the said lease, so negotiated by the agents and representatives of the first preferred stockholders, sacrifices the future and prospective earnings of the company in which the second preferred and common stockholders are interested in consideration of the payment of a fixed guarantee to the first preferred stockholders, it is inequitable and unjust that the said first preferred stockholders should be allowed to vote at all upon the question of the approval and authorization of the said lease, and that they should be enjoined and restrained from being allowed to take part in the said meeting of stockholders, to be held on the twenty-second day of December, 1888.

Twenty-seventh. That the said lease contains no proper provisions for the protection of the interests of the East Tennesse, Virginia and Georgia Railway Company in respect to the regulation and fixing of the rates and tolls, but, on the contrary, the absolute power to regulate, fix, and vary such rates and tolls is vested in the Richmond and Danville Railroad Company without any right of supervision or regulation or of ensuring a fair and equitable division and apportionment thereof, so that it would be possible for the Richmond and Danville Railroad Company to make arbitrary allowances and abatements upon the business conducted over the line of the East Tennessee, Virginia and Georgia Railway Company, while charging full rates upon its own line, and still make the joint or combined rate as low as charged by competing and rival lines. The whole control of the business is thus entrusted to the absolute and unfettered discretion of a company having an adverse and hostile interest in every transaction to be conducted over the line of the East Tennessee, Virginia and Georgia Railway Company and in every item of business that can be diverted from such line to that of the Richmond and Danville Railroad Company, thus showing, in negotiating and entering into such agreement, the directors of the company have been utterly regardless of the interests of the majority of the stockholders, and have cared only for the interests of the minority, by whom they were elected.

Twenty-eighth. That over three hundred and fifty miles of the railroad of said East Tennessee, Virginia and Georgia Railroad Company are situated within the State of Georgia, and that the company is a corporation of the said State of Georgia and owns and operates so much of its railroad as is situated within that State, under and by virtue of the laws thereof, and is subject to the provisions of its constitution, whereby it is provided:

"The General Assembly of this State shall have no power to authorize any corporation to buy shares or stock in any other corpora-

tion in this State or elsewhere, or to make any contract or agreement whatever with any such corporation, which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses or to encourage monopoly, and all such contracts and agreements shall be illegal and void."

And is also subject to the provisions of an act of the General Assembly of Georgia entitled "An act to provide a general law for the incorporation of railroads and to regulate the same," approved September 27th, 1881, as follows:

"That any railroad company in this State shall have the power, and authority is hereby granted, to make and enter into contracts with any railroad company which has constructed or shall hereafter construct any railroad within this State or another State as will enable said companies to run their roads in connection with each other and to merge their stocks or to consolidate with any such company within or without this State, or to lease or purchase the stock and property of any other such company and hold, use, and occupy the same in such manner as they may deem most beneficial to their interest. It shall be lawful for such companies to build, construct, and run as part of their corporate property such number of steamboats or vessels as they may deem necessary to facilitate the business operations of such company or companies: Provided, That no railroad shall purchase a competing line of railroad or enter into any contract with a competing line of railroad calculated to defeat or lessen competition in this State, as well as in violation of the provision of the charter of the Cincinnati and Georgia Railroad Company hereinbefore recited." Laws of Georgia, 1881, page 156.

Twenty-ninth. That the said East Tennessee, Virginia and Georgia Railway Company also holds and enjoys its rights and privileges within that State, under and subject to the provisions of the eighteenth section of the charter of the Cincinnati and Georgia Railroad Company hereinbefore set forth, and that if the pretended contract of lease entered into by the board of directors, annexed hereto as "Exhibit D," should be authorized or approved by the vote of a majority in amount of the stock of the lessor company, at the meeting called for the purpose, so that the same should become operative and binding as a corporate act, the franchises, powers, and privileges of the said company within the State of Georgia would cease and determine absolutely, and it would become the duty of the attorney general to institute proceedings to forfeit the same, and thereby your orators would suffer great and irreparable injury.

Thirtieth. That the said directors of the East Tennessee, Virginia and Georgia Railway Company, who united in authorizing the said lease, and those associated with them, allege and claim that they control a majority of the shares of the said company, and that they will be able to vote the requisite majority at a meeting, to be held on the said twenty-second day of December, 1888; but your orators charge and aver that it will not be competent for the stockholders of the said company, at the said meeting, or for the directors to

make and execute said lease, as the same would be in disregard and violation of the provisions of the constitution and laws of the State of Georgia, and particulaly of the eighteenth section of the charter of the Cincinnati and Georgia Railroad Company hereinbefore set forth, and would subject the properity of said company within the State of Georgia to proceedings of forfeiture at the suit of the attorney general of that State, and that thereby the value of the property of your orators would be impaired and rendered comparatively worthless.

Thirty-first. That the board of directors of said East Tennessee, Virginia and Georgia Railway Company is so completely under the control of said Richmond and West Point Terminal Railway and Warehouse Company and its directors and the acts complained of herein are the results of such a deliberate and determined course adopted and carried out regardless of the rights of said East Tennessee, Virginia and Georgia Railway Company and its stockholders and for the express purpose of diverting and destroying the business of the East Tennessee, Virginia and Georgia Railway Company that any request to said board of directors in the interest of the great body of stockholders to protect their interest would be utterly disregarded; that, by reason of the voting power conferred upon said first preferred stock held by said Richmond and West Point Terminal Railway and Warehouse Company, the stockholders of said East Tennessee, Virginia and Georgia Railway Company cannot, at the next annual meeting of the stockholders, deprive said Richmond and West Point Terminal Railway and Warehouse Company of its control of a majority of the board, and in consequence thereof it is impossible and futile for these plaintiffs or any of the stockholders to take any steps within the company, either through its board or by its stockholders, to remedy the acts complained of herein, and if such acts be not forthwith remedied and the defendants, John H. Inman, Samuel Thomas, John G. Moore, Emanuel Lehmen, Calvin S. Brice, C. M. McGhee, T. M. Logan, George S. Scott, James Swann, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., Geo. Coppell, Thomas P. Fowler, and James E. Grannes, be not removed from their office of directors of the East Tennessee, Virginia and Georgia Railway Company, or restrained from carrying out their fraudulent purpose and design, the East Tennessee, Virginia and Georgia Railway Company will be ruined, and the property of the holders of its common and second preferred stock will be destroyed.

Wherefore your orators pray—

1. That the parties named as defendants in the caption be made such by the process of the court.

2. That the Richmond and West Point Terminal Railway and Warehouse Company be enjoined and restrained from voting upon the shares of stock held or owned by it at the meeting of the stockholders of the East Tennessee, Virginia and Georgia Railway Company, to be held upon the twenty-second day of December, 1888, for the purpose of considering the proposed lease, or at any other meeting of said stockholders held for the purpose of authorizing or ap-

proving a lease to the said Richmond and Danville Railroad Company.

3. That leave be granted to make such of the holders of the first preferred stock other than the Richmond and Danville Terminal Railway and Warehouse Company as can be discovered and found within the jurisdiction of the court parties defendant as representatives of that interest, and that the officers appointed to conduct the said election may also be made parties defendant, and that the holders of the said first preferred stock may be enjoined and restrained from voting thereon, and the said officers of election may be enjoined and restrained from receiving any votes of the holders of said first preferred stock at the said meeting, to be held upon the twenty-second day of December, 1888, for the purpose of considering this proposed lease, or at any other meeting of the said stockholders held for said purpose.

4. That the said East Tennessee, Virginia and Georgia Railway Company be restrained, by injunction temporarily until hearing and perpetually thereafter, from approving the said pretended lease or authorizing or executing any lease of the property and franchises of the said company to the said Richmond and Danville Railroad Company or to any other corporation or person in the interest or for the benefit of the said Richmond and Danville Railroad Company.

5. That the defendants, the said Richmond and Danville Railroad Company and the said Richmond and West Point Terminal Railway and Warehouse Company, be required to make full discovery, under oath, of all and singular the premises, and particularly of all negotiations, contracts, and agreements, whether in writing or by parol, relating to the purchase of the capital stock of the Georgia company by the said Richmond and Danville Railroad Company or by any other corporation or person in the interest of or for the benefit of the said Richmond and Danville Railroad Company.

6. That the Richmond and Danville Railroad Company be enjoined and restrained by injunction temporarily until hearing and perpetually thereafter from maintaining the possession and from operating and using the railroads, property, and franchises of the East Tennessee, Virginia and Georgia Railway Company or doing any act whatever under the authority of said pretended lease; and that a receiver be appointed to take charge, custody, and possession of the railroads, property, and franchises of the said East Tennessee, Virginia and Georgia Railway Company until the stockholders of the company shall have had an opportunity to elect other directors to properly represent and protect their interests; and your orators pray for such other, further, and different relief as the nature of the case may require.

This is the first application for injunction in this cause.

INGERSOLL & PEYTON,
DICKINSON & FRAZER,
CHARLES M. DA COSTA,
SAMUEL DICKSON,
For Plaintiffs.

EXHIBIT A.

Know all men by these presents that the undersigned (being the board of directors of the East Tennessee, Virginia and Georgia Railway Company this day elected by the purchasers of the railroad, property, and franchises of the East Tennessee, Virginia and Georgia Railroad Company at the judicial sale thereof on May 25th, 1886, under the decree of the United States circuit court for the eastern district of Tennessee, in the case of The Central Trust Company of New York against The East Tennessee, Virginia and Georgia Railroad Company *et al.*) assembled at Knoxville, Tenn., on the thirtieth day of June, 1886, and elected a president and other officers, adopted by-laws for the government of the company, and fixed the amount of the capital stock and bonds of said company in pursuance of the statute of Tennessee entitled "An act as to the sale of railroads under mortgage, granting certain powers to purchasers, and authorizing incorporation of purchasers," passed March 12th, 1877, and approved March 16th, 1877, and do now hereby certify as follows, to wit:

First. That the name of said corporation is "East Tennessee, Virginia and Georgia Railway Company."

Second. The amount of capital stock of said corporation is $57,000,000 divided into five hundred and seventy thousand shares of $100 each, $11,000,000 or one hundred and ten thousand shares of which are first preferred stock entitled to a five per cent. non-cumulative dividend per annum before any dividends are paid upon the second preferred or common stock of the company, and having the exclusive right to elect eight members of the board of directors of said company during the years of 1887, 1888, 1889, and 1890, and the remaining seven directors to be elected during said years by all the common and preferred stock of said company, unless, before the annual meeting of the stockholders in the year 1890, said railway company shall pay out of its net earnings for two successive years full five per cent. dividends on said first preferred stock, in which event the right of such first preferred stock to elect eight members of the board of directors of said railway company shall cease and determine, and thereafter and in any event after the year 1890 the entire board of directors of said railway company shall be elected by the stockholders, preferred and common; $18,500,000 or one hundred and eighty-five thousand shares of which are second preferred stock entitled to a five per cent. non-cumulative dividend per annum before the payment of any dividends on the common stock of the company, and $27,500,000 or two hundred and seventy-five thousand shares of which are common stock.

Third. The number of the board of directors of said corporation is fifteen, and the names and residences of the first board, which shall hold its office until its successors is elected at the annual meeting of the stockholders in the year 1887, are as follows, to wit:

Charles M. McGhee, Knoxville, Tenn.

Edward J. Sanford, Knoxville, Tenn.

Henry Fink, Knoxville, Tenn.
O. H. P. Rogan, Knoxville, Tenn.
James G. Mitchell, Knoxville, Tenn.
Robert H. Campbell, Knoxville, Tenn.
Robert H. Richards, Atlanta, Ga.
J. O. Moss, Sandusky, Ohio.
Samuel Thomas, New York, N. Y.
C. S. Brice, New York, N. Y.
Samuel Shethar, New York, N. Y.
George Warren Smith, New York, N. Y.
John G. Moore, New York, N. Y.
O. H. Payne, New York, N. Y.
Wm. M. Baxter, Knoxville, Tenn.

Fourth. That the railroad of said corporation lines in the States of Tennessee, Georgia, Alabama, and Mississippi, beginning at Bristol, on the line between the State of Tennessee and the State of Virginia, and running thence, via Knoxville and Cleveland, to Chattanooga, in the State of Tennessee, and from Cleveland, in said State, via Dalton, Rome, Atlanta, and Macon, in the city of Brunswick, in the State of Georgia, and running from Rome, Georgia, via Calera and Selma to Meridian, Mississippi, and including a cut off from Ooltewah, in Tennessee, to Red Clay, Georgia, and also including a branch from Morristown to Paint Rock, Tennessee, and also including a branch from Cochran to Hawkinsville, Georgia.

Fifth. That said railroad has heretofore been known under the name of East Tennessee, Virginia and Georgia Railroad Company, which was formed from the consolidation of the prior existing East Tennessee and Virginia and East Tennessee and Georgia Railroad Companies of the State of Tennessee. The said East Tennesse, Virginia and Georgia Railroad Company having subsequent to its consolidation acquired by purchase the railroads and franchises of the Georgia Southern Railroad Company, the Macon and Brunswick Railroad Company, and the Cincinnati and Georgia Railroad Company, corporations of the State of Georgia, and the Selma, Rome, and Dalton Railroad Company, the Alabama Central Railroad Company, corporations of the State of Alabama, and the Tennessee State Line Railroad Company, a corporation of the States of Tennessee and Georgia, the property and franchises of all of which companies have become vested in the corporation whose formation is hereby certified.

In witness whereof the president of the East Tennessee, Virginia and Georgia Railway Company and the members of its board of directors have signed this certificate this thirtieth day of June, A.D. 1886.

CHARLES M. McGHEE.
E. J. SANFORD.
HENRY FINK.
O. H. P. ROGAN.
JAMES G. MITCHELL.
R. H. CAMPBELL.
R. H. RICHARDS.
JAY O. MOSS.
C. S. BRICE.
SAMUEL SHEATHER.
GEORGE WARREN SMITH.
JOHN G. MOORE.
O. H. PAYNE.
WM. M. BAXTER.
SAMUEL THOMAS, *President.*

STATE OF TENNESSEE, }
Knox County. }

Personally — J. N. Mitchell, a notary public in and for the State and county aforesaid, came C. M. McGhee, E. J. Sanford, Henry Fink, O. H. P. Rogan, James G. Mitchell, R. H. Campbell, R. H. Richards, Jay O. Moss, C. S. Brice, Samuel Sheather, George Warren Smith, John G. Moore, O. H. Payne, William M. Baxter, and Samuel Thomas, with whom I am personally acquainted, who acknowledged that they signed the foregoing instrument as their act and deed and for the purposes therein expressed and in order to comply with the provisions of law touching incorporations, &c.

Witness my hand and official seal, at Knoxville, Tennessee, this June 30th, 1886.

J. N. MITCHELL,
Notary Public.

I, John Allison, secretary of state, do certify that this instrument and certificate attached, the foregoing, which is a true copy, was this day registered and certified to by me.

JOHN ALLISON,
Secretary of State.

July 1st, 1886.

Office secretary of state of the State of Tennessee, and registered in Book "K," pages 529, 530, 531, 532, and 533 record of corporations.

EXHIBIT B.

This indenture made this twenty-eighth day of June, in the year one thousand eight hundred and eighty-six, between William Rule, special master in chancery, duly appointed as hereinafter mentioned, of the first part, and Frederic P. Olcott, Charles M. McGhee, Frederick D. Tappen, George Warren Smith, and Edward W. Corlies, of the second part.

Whereas at a stated term of the circuit court of the United States for the eastern district of Tennessee, held at the United States court-rooms, in the city of Knoxville, on the eighteenth day of March one thousand eight hundred and eighty-six, it was, among other things, ordered, adjudged, and decreed by the said court in a certain suit, cause, or proceeding in equity, then pending in said court between The Central Trust Company of New York, complainant, and The East Tennessee, Virginia and Georgia Railroad Company, The Tennessee State Line Railroad Company, and Samuel Thomas, defendants, that all and singular the premises and property mentioned in said judgment or decree and hereinafter described be sold at public auction, in the manner therein provided and in accordance with the course and practice of said court, by or under the direction of the said William Rule, special master in chancery of said court, without appraisement and without the benefit of any stay, valuation, redemption, or relief; that said sale be at public auction to the highest bidder, and

be made in Knoxville, in the State of Tennessee, at such time and place as the said special master should in and by the notice of such sale appoint, not later than the twenty-fifth day of May, one thousand eight hundred and eighty-six; that notice of the time, place, and terms of such sale and of the property to be sold be given by said special master by publication of an advertisement thereof at least once in each week for the term of six weeks preceding the day of sale, in two newspapers published in each of the cities of New York, Knoxville, and Chattanooga; that said special master after said sale make report to said court of all his proceedings, and that upon the completion and confirmation by the court of the sales so to be made, then that he execute and deliver to the purchaser or purchasers of the said property a good and sufficient deed of conveyance in fee simple, which deed should specify the property so purchased and the sum paid therefor;

And whereas the said judgment or decree and all and singular the terms and provisions thereof were in all respects duly adopted and confirmed by the circuit courts of the United States for the northern district of Georgia, the southern district of Georgia, the northern district of Alabama, the middle district of Alabama, and the southern district of Mississippi, and made the decree of said several and respective courts in ancillary suits therein pending between the same parties, complainant and defendant, as were parties in said suit in the circuit court of the United States for the eastern district of Tennessee;

And whereas, by an amended and supplemental decree duly made and entered in said last-mentioned suit on the twenty-ninth day of April, 1886, and adopted, confirmed, and made the decree of said circuit courts of the United States for the northern district of Georgia, the southern district of Georgia, the northern district of Alabama, the middle district of Alabama, and the southern district of Mississippi, respectively, the said judgment or decree was amended and modified in divers particulars;

And whereas the said special master, in pursuance of the said judgments and decrees, and also of an order of the said circuit court of the United States for the eastern district of Tennessee, dated May 19th, 1886, did, on the twenty-fifth day of May, 1886, sell at public auction, at the door of the United States custom-house, in Knoxville, in the State of Tennessee, the property and premises in the said judgments and decrees mentioned, due notice of the time and place and terms of said sale having been given agreeably to the said judgments and decrees, at which sale the property and premises hereinafter described were struck off to the said parties of the second part and Robert Fleming, as purchasing trustees, for the sum of ten million two hundred and fifty thousand dollars ($10,250,000), that being the *the* highest sum bidden for the same;

And whereas the said special master thereafter duly made and filed his report of said sale;

And whereas the said Fleming thereafter duly assigned his interest in said bid to the said Frederick P. Olcott, one of the parties of

the second part; and said report and the said sale have been duly confirmed:

Now, this indenture witnesseth that the said special master, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid in pursuance of the judgments or decrees aforesaid and in conformity to the law, and also in consideration of the premises and of the said sum of money so bidden as aforesaid being first duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, unto the said parties of the second part as purchasing trustees and as joint tenants and not as tenants in common the following-described property and premises, namely:

All the right, title, and equity of redemption of the East Tennessee, Virginia and Georgia Railroad Company or of Henry Fink, receiver, or of any of the parties to said cause in and to "all and singular the estate and property, real, personal, and mixed, and all fixtures, rights, privileges, immunities, franchises easements, rights under leases, terms, and parts of terms, agreements, covenants, and contracts of all and every kind, at any time held and owned or occupied by or belonging to the East Tennessee, Virginia and Georgia Railroad Company, including all and singular its lines of railroad from and including the terminus and depot at Bristol, in the county of Sullivan, State of Tennessee, and thence two hundred and forty-two miles, more or less, via Knoxville, to the city of Chattanooga, in the county of Hamilton, in said State of Tennessee, and including the line of railroad of said East Tennessee, Virginia and Georgia Railroad Company from Cleveland, in the county of Bradley, in said State of Tennessee, thirty miles, more or less, to Dalton, in the county of Whitfield, in the State of Georgia, and including the branch line from Ooltewah, in the county of James, in the State of Tennessee, to Red Clay, in the county of Whitfield, in the State of Georgia, twelve miles, more or less; and also including the line of railroad of the East Tennessee, Virginia and Georgia Railroad Company commencing in the city of Selma, in the county of Dallas, in the State of Alabama, and extending thence in a northeasterly direction continuously through the counties of Dallas, Autauga, Perry, Bibb, Shelby, Talladega, Calhoun, and Cherokee, in said State of Alabama, one hundred and seventy-two miles, more or less, to the line of the State of Georgia, and thence, in the said State of Georgia, through the county of Floyd, by way of Rome, in the last-named county, and also through the counties of Gordon and Whitfield to the town of Dalton, in the last-named county and State, sixty-five miles, more or less, and then terminating at the point or points of connection with the Western and Atlantic railroad and with the other lines of railroad of the said railroad company hereinbefore referred to; and also including the line of railroad of said railroad company extending from Morristown, in the State of Tennessee, to Paint Rock, at or near the State line between the States of Tennessee and North Carolina, forty-five miles, more or less; and also including the line of the railroad company from Rome, in the county of Floyd, by way of

Atlanta and Macon, to Brunswick, in the county of Glynn, and from Cochran, to Hawkinsville, both in the county of Pulaski, all in the State of Georgia, three hundred and seventy-eight miles, more or less; and also including the line of railroad of said railroad company from Selma, in the county of Dallas, in the State of Alabama, by way of Lauderdale, to Meridian, in the county of Lauderdale, in the State of Mississippi, one hundred and thirteen miles, more or less, and being in all one thousand one hundred and twenty-three miles, more or less; and also all and singular the lands, roadways, tracks, superstructures, rails, laid or to be laid, sidings, turnouts, bridges, piers, wharves, viaducts, culverts, walls, fences, ways and rights of ways, depots, station-houses, engine-houses, car-houses, freight-houses, warehouses, building and repair shops, machine shops, depot grounds and lands procured, provided, or intended for use for that purpose, lands used or procured or intended for sidings, all buildings, structures, erections, improvements, leases and leasehold interests, contracts, choses in actions, easements, and privileges at any time belonging or appertaining to or used or procured or designed to be used for the purpose of or in connection with the said line of railroad or the maintenance and operation thereof or of any part thereof; and also all the locomotives, tenders, passenger cars, baggage cars, freight cars, and other cars, and all other rolling stock and equipment, and all machinery, tools, and implements, rails, chairs, and spikes, and other materials at any time owned or possessed by the said railroad company or by Henry Fink, receiver thereof, for the uses or purposes of or designed for use in connection with or for the operation, maintenance, or reparation of the said lines of railroad or any part thereof or the equipment or appurtenances thereof; and also all and singular the rights, privileges, and franchises which the said railroad company or Henry Fink, receiver thereof, at any time held, possessed, or was entitled unto; and also all the rights, privileges, and franchises which the said railroad company at any time acquired or became possessed of or entitled unto for or in respect of or for the uses or purposes of the said lines of railroad or the operation or maintenance of the same or any part thereof; and also all the tolls and income of the said lines of railroad, together with all and singular the tenements, hereditaments, and appurtenances of the premises or any of them or any part thereof, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well at law as in equity, of the said East Tennessee, Virginia and Georgia Railroad Company and Henry Fink, its receiver, of, in, and to the same and every part and parcel thereof.

"Also all the right, title, and interest of the said East Tennessee, Virginia and Georgia Railroad Company, as well as of the Central Trust Company of New York, of, in, and to two millions four hundred thousand dollars ($2,400,000) of the capital stock of the Memphis and Charleston Railroad Company, and all the shares owned by the East Tennessee, Virginia and Georgia Railroad Company or held in trust for said company by E. H. R. Lyman or others of

the capital stock of the Knoxville and Ohio Railroad Company, and two hundred thousand dollars ($200,000), par value, of the Cincinnati and Georgia Division bonds of the East Tennessee, Virginia and Georgia Railroad Company heretofore deposited with the said Central Trust Company of New York pursuant to the terms and provisions of a judgment or decree of the circuit court of the United States for the eastern district of Tennessee in the suit of The Mayor and Aldermen of Knoxville against The Knoxville and Ohio Railroad Company and others.

"Also all the right, title, and equity of redemption of the East Tennessee, Virginia and Georgia Railroad Company, and the Tennessee State Line Railroad Company, and of Samuel Thomas, and of said receiver or any or either of them or of any of the parties to said cause in and to—

"All and singular the estate and property, real, personal, and mixed, and all fixtures, rights, privileges franchises, easements, rights, and leases, terms and parts of terms, agreements, covenants, and contracts of all and every kind held and owned or occupied by or belonging to the East Tennessee, Virginia and Georgia Railroad Company and the Tennessee State Line railroad, including all and singular the lines of railroad of the said Tennessee State Line Railroad Company from and including the terminus and depot — Ooltewah, in the county of James, in the State of Tennessee, and thence to or near to Red Clay, in the county of Whitfield, in the State of Georgia; and also—

"All and singular the lands, roadways, tracks, superstructures, rails, laid or to be laid, sidings, turnouts, bridges, piers, wharves, viaducts, culverts, walls, fences, ways and rights of way, depots, station-houses, engine-houses, car-houses, freight-houses, warehouses, building and repair shops, machine shops, depot gounds and lands procured, provided, or intended for use for that purpose, lands used or procured for sidings, buildings, structures, erections, improvements, leases and leasehold interests, contracts, choses in actions, easements, and privileges used or procured or designed to be used for the purpose of or in connection with said line of railroad or the maintenance or operation of the same or any part thereof; and also all the locomotives, tenders, passenger cars, baggage cars, freight cars, and other cars, and all other rolling stock or equipments, and all machinery, tools, and implements, rails, chairs, and spikes, and other materials whatever at any time owned or possessed by the said Tennessee State Line Railroad Company or its successors for the uses or purposes of or designed for use in connection with or for the operation, maintenance, or reparation of the said line of railroad or any part thereof or the equipment or appurtenances thereof; and also all and singular the rights, privileges, and franchises which the said last-mentioned company at any time held, possessed, or was entitled unto; and also all the privileges and franchises which the said last-mentioned company acquired or became possessed of or entitled unto for or in respect of or for the uses or purposes of said line of railroad or the operation or maintenance of the same, or any part thereof;

and also all the tolls and income of the said line of railroad, together with all and singular the tenements, hereditaments, and appurtenances of the premises aforesaid or any of them or any part thereof, and the reversion or reversions, remainder or remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well at law as in equity, of the said railroad companies or either of them of, in, and to the same and every part and parcel thereof—

"Subject, however, to the lien, if any there be, of a certain mortgage made by the Tennessee State Line Railroad Company to the Central Trust Company of New York, dated March 1st, 1883.

"Also all the property and premises mentioned and described in a certain instrument of conveyance in the nature of a mortgage made by Samuel Thomas to the Central Trust Company of New York, dated April 1st, 1883, and recorded in the office of the clerk of the superior court of Fulton county, Georgia, on June 30th, 1883, in Mortgage Book K, pages 754 to 770, inclusive, and in the office of the clerk of the superior court of Bibb county, Georgia, on October 15th, 1883, Book III, at folios 75 to 101, inclusive, subject, however, to the lien, if any there be, of said last-mentioned instrument.

"Also all the premises and property mentioned and described in a certain instrument of conveyance in the nature of a mortgage made by Samuel Thomas to the Central Trust Company of New York, dated October 14th, 1884, and recorded in the office of the clerk of the superior court of Fulton county, Georgia, on December 9th, 1884, in Book L, page 795, &c., subject, however, to the lien, if any there be, of said last-mentioned instrument:

"To have and to hold all and singular the property and premises above mentioned and described and hereby conveyed or intended so to be unto the said parties of the second part as purchasing trustees as aforesaid, their heirs and assigns, for their only proper use, benefit, and behoof forever—

"Subject, however, to the condition following, which is a part of the consideration of said purchase and in addition to the sum so bidden and paid as aforesaid—that is to say: That the said parties of the second part, their heirs and assigns, assume and pay off and discharge any and all debts, claims, and demands of whatsoever nature now pending and undetermined in either of the courts in which the said original and ancillary suits are pending which may be allowed and adjudged by the said circuit court of the United States for the eastern district of Tennessee as prior to any right secured under the consolidated first mortgage mentioned in said judgment or decree; and subject likewise to all debts, claims, and demands of whatsoever nature incurred by Henry Fink as receiver in said suits and which may remain unpaid at the termination of said Fink's receivership."

In witness whereof the said party of the first part, special master as aforesaid, hath hereunto set his hand and seal the day and year first above written.

[SEAL.]

WM. RULE,
Special Master.

Signed, sealed, and delivered in the presence of—

On page 5, lines 8, 26, 27, 28, and 29, interlineations and alterations made—

HENRY B. TOMKINS.
E. J. SANFORD.
WILLIAM M. BAXTER.

STATE OF TENNESSEE, }
Knox County. }

Personally before me, Charles T. Champion, a notary public in and for the county and State aforesaid, came William Rule, the bargainor in the foregoing instrument, with whom I am personally acquainted, who acknowledged that he executed the same for the purposes therein expressed.

Witness my hand and official seal, at Knoxville, Tennessee, this twenty-sixth day of June, 1886.

[SEAL.] CHARLES T. CHAMPION,
Notary Public.

EXHIBIT C.

An act to amend and re-enact sections two, five, six, seven, and eight of an act entitled An act to incorporate the Richmond and West Point Terminal Railway and Warehouse Company, approved March 8th, 1880. (Approved February 21, 1882.)

* * * * * * *

4. The said Richmond and West Point Terminal Railway and Warehouse Company is hereby authorized and empowered to erect and construct at or near the city of Richmond, and at or near the town of West Point, Virginia, and at or near any other point on deep water on the James or York river or Hampton Roads, wharves, piers, docks, basins, warehouses, elevators, cotton presses suitable for the accom-odation of steamships, vessels, and boats and for the convenient loading, unloading, shipping, receiving, and storing of all kinds of merchandise and personal property for safe keeping, and may conduct the business usually transacted by warehousemen, wharfingers, and lightermen, and may charge and collect compensation for the storage, dockage, wharfage, and lighterage and for all labor incident thereto, including the expense of weighing, insuring, keeping, and delivering such merchandise or personal property, at such rates and on such terms as may be agreed upon between it and its customers, and for any advances made by it on merchandise or property stored or deposited with it for shipment and for all charges and expenses incident thereto the said company shall have preferred lien on said merchandise and property, which shall be paid before the said company shall be required to deliver the same.

5. That for convenience of access to such improvements the said company shall also have authority to construct, equip, and operate one or more railways, with all necessary sidings and branches (the

latter not to exceed fifteen miles in length), from any of said structures to such point or points of convenient connection with each or any line of railway passing through or terminating at or near either Richmond or West Point, Virginia, as the said company shall determine, and for that purpose may acquire title in the mode prescribed by law to a continuous line of one hundred feet in width of land and such additional lands as may be necessary for the use of said roads and tracks and for the buildings and works of said company.

6. The said company shall have power to unite, consolidate, or connect the railways owned, operated, or controlled by it with any line of railway constructed or which may be constructed in this State upon such terms as may be agreed upon between it and such other railway company, and for this purpose power is hereby granted to it and to any railway company incorporated by this State to make and carry out such contracts, by lease, purchase, or otherwise, as will facilitate and consummate such connection or consolidation.

7. Any railway, steamship, or navigation company with which said Richmond and West Point Terminal Railway and Warehouse Company may connect is hereby authorized to acquire, by subscription, purchase, or otherwise, any portion of the capital stock of said company, and said company is authorized to acquire in like manner any portion of the capital stock of any such railway, steamship, or navigation company, and stock so acquired shall have the same privileges and powers and be subject to the same conditions and regulations as the stock held by other stockholders therein.

8. The said company is hereby authorized to acquire, by subscription, purchase, or otherwise, or to guarantee any portion of the capital stock or bonds of any company organized for or engaged in the building, construction, or operation of any line of railroad in this State or in the States of North Carolina, South Carolina, Florida, Tennessee, Kentucky, Georgia, Alabama, Mississippi, Louisiana, Arkansas, or Texas which may have been or may hereafter be constructed.

EXHIBIT D.

This indenture, made this seventeenth day of October, in the year of one thousand eight hundred and eighty-eight, by and between the East Tennessee, Virginia and Georgia Railway Company, a corporation duly organized under the laws of the State of Tennessee, hereinafter designated as the "East Tennessee Company," party of the first part, and the Richmond and Danville Railroad Company, a corporation duly organized under the laws of the State of Virginia, hereinafter designated as the "Danville Company," party of the second part:

Whereas said party of the first part owns and operates a certain railway company, known as the East Tennessee, Virginia and Georgia railway, including the terminus and depot at Bristol, in the county of Sullivan, in the State of Tennessee, and thence by way of

Knoxville to the city of Chattanooga, in the county of Hamilton, in said State, and including the line of railway of the said East Tennessee Company from Cleveland, in the county of Bradley, in the State of Tennessee, to Dalton, in the county of Whitfield, State of Georgia, and including the branch from Ooltewah, in the county of James, State of Tennessee, to Red Clay, in the county of Whitfield, in said State, and also including the line of railway belonging to said East Tennessee Company commencing in the city of Selma, in the county of Dallas, State of Alabama, and extending thence in a northeasterly direction in said State of Alabama to the line of the State of Georgia, and thence in said State of Georgia, by the way of Rome, in the county of Floyd, to the town of Dalton, in the county of Whitfield, there terminating at the point or points of connection with the Western Atlantic railroad and with the other lines of railway of the party of the first part hereinbefore referred to, and also including the line of railway of said party of the first part extending from Morristown, in the State of Tennessee, to Paint Rock, at or near the State line between the States of Tennessee and North Carolina, and also including the line of railway of the said party of the first part from Rome, in the county of Floyd, by way of Atlanta and Macon, to Brunswick, in the county of Glynn, and from Cochran to Hawkinsville, both in the county of Pulaski, in the State of Georgia, and also including the line of railway of the East Tennessee Company from Selma, in the county of Dallas, in the State of Alabama, by way of Lauderdale, to Meridian, in the county of Lauderdale, in the State of Mississippi, and also including the line of railway belonging to said party of the first part, known as the Walden's Ridge railroad, extending from a point in the State of Tennessee on the line of the Cincinnati, New Orleans and Texas Pacific railroad at or near Emory Gap, by way of Poplar Springs, in said State, to a connection with the Knoxville and Ohio railroad at or near the town of Clinton, in the State aforesaid, and including the Coal Creek, Emory River, and other branches and extensions thereof;

And whereas the said East Tennessee Company is the owner of stock of the Knoxville and Ohio Railroad Company of the par value of seven hundred and sixty-seven thousand dollars, of the stock of the Memphis and Charleston Railroad Company of the par value of two million six hundred and fifty-six thousand five hundred and twenty-five dollars, and of stock of the Mobile and Birmingham Railroad Company of the par value of one million five hundred and thirty thousand dollars;

And whereas said East Tennessee Company has the right, by its charter and by the laws of the State of Tennessee, under which it is incorporated, to extend its lines of railway; to issue bonds and to secure the same by deeds of trust or mortgages; to purchase and lease other lines of railway; to guarantee the payment of bonds of other railway companies, and to do other and divers things in accordance with the laws of the State of Tennessee and other States;

And whereas said East Tennessee Company has heretofore issued its mortgage bonds as it was legally authorized to do, and has become

and is liable upon and its property is incumbered by bonds issued by predecessor companies, to wit:

One bond East Tennessee and Georgia Railroad Company, due July 1st, 1880, for one thousand dollars, of which, although overdue, payment has not been demanded;

Three thousand one hundred and twenty-three bonds of the East Tennessee, Virginia and Georgia railroad first-mortgage bonds, bearing interest at the rate of seven per cent. per annum, dated July 1st, 1870, the principal whereof is due July 1st, 1900, being the gross sum of three million one hundred and twenty-three thousand dollars, the annual interest thereon being the sum of two hundred and eighteen thousand six hundred and ten dollars;

Three thousand one hundred and six East Tennessee, Virginia and Georgia railroad first-mortgage bonds, bearing interest at the rate of five per cent. per annum, dated July 1st, 1870, the principal whereof is due July 1st, 1930, being the gross sum of three million one hundred and six thousand dollars, the annual interest thereon being one hundred and fifty-five thousand three hundred dollars;

One thousand Alabama Central first-mortgage bonds, bearing interest at the rate of six per cent. per annum, the principal whereof is due July 1st, 1919, being the gross sum of one million dollars, the annual interest thereon being sixty thousand dollars;

Twelve thousand seven hundred and seventy East Tennessee, Virginia and Georgia Railway Company consolidated gold bonds, bearing interest at the rate of five per cent. per annum, dated November 1st, 1886, the principal whereof is due November 1st, 1956, being the gross sum of twelve million seven hundred and seventy thousand dollars, the interest thereon being the sum of six hundred and thirty-eight thousand five hundred dollars per annum;

One thousand East Tennessee, Virginia and Georgia Railway Company first-mortgage extension bonds, bearing interest at the rate of five per cent. per annum, dated June 1st, 1887, the principal whereof is due June 1st, 1937, being the gross sum of one million dollars, the interest thereon amounting to the sum of fifty thousand dollars per annum; and

Twenty-five hundred East Tennessee, Virginia and Georgia Railway improvement and equipment bonds, bearing interest at the rate of five per cent. per annum, dated September 1st, 1888, the principal whereof is due September 1st, 1938, being the gross sum of two million five hundred thousand dollars, the interest thereon amounting to the sum of one hundred and twenty-five thousand dollars per annum, the issue whereof has been heretofore authorized by the board of directors, but not as yet approved by the stockholders of said East Tennessee Company;

And whereas there remains unissued by said East Tennessee, Virginia and Georgia Railway Company its extension bonds of the par value of fourteen million dollars, and its improvement and equipment bonds of the par value of three million five hundred thousand dollars, so as aforesaid authorized by the board of directors of said East Tennessee Company;

Whereas the party of the first part has, by an agreement with the

Mobile and Birmingham Railroad Company, dated March 15th, 1887, guaranteed and agreed to guarantee the prompt payment of the interest upon certain bonds issued by the said Mobile and Birmingham Railroad Company of the par value of three million dollars;

And whereas the said East Tennessee Company has issued preferred capital stock of the value of eleven million dollars;

And whereas the party of the second part is desirous, by lease for the term of ninety-nine years, of acquiring the possession and control of all the said lines of railroad, and the income arising therefrom, now belonging to said East Tennessee Company, by whatsoever title held:

Now, therefore, this indenture witnesseth:

Article first. The said East Tennessee, Virginia and Georgia Railway Company, in consideration of the premises and of the rents and covenants hereinafter reserved and contained on the part of the said party of the second part to be paid and performed, does by these presents grant, demise, let, and lease unto the said Richmond and Danville Railroad Company, its successors and assigns, all and singular the railroad lines constructed and which are now owned by the said East Tennessee Company, by whatsoever title the same may be owned or held, and also all the lands, tenements, hereditaments, ways, and rights of ways now owned, held, or possessed by the said East Tennessee Company for said railroad and for any and all purposes in connection with the construction, working, maintenance, and operation of the same or any or all of them, and all the easements and appurtenances thereunto belonging or in anywise appertaining, and also all branches, extensions, sidings, tracks, bridges, depots, fences, stations, section-houses, tanks, warehouses, freight-houses, engine-houses, car and machine shops, and all other buildings, fixtures, and improvements of whatever kind and description and wherever situated, now owned or held by the said East Tennessee Company for the use of said railroad, or in connection with the working, maintenance, and operation of the same; also all locomotives, tenders, stationary engines, cars, trucks, push-cars, hand-cars, and all other rolling stock and equipments, and all the tools and implements, machinery, fuel, materials, and supplies now owned, held, or possessed by the said East Tennessee Company for use in connection with the said railroads or any of them, or in connection with the working, maintenance, and operation of the same; and also all real estate or other personal property, wheresoever the same may be situated, now belonging to said East Tennessee Company, or now owned, held, or possessed for use in connection with said railroads or any of them, or in connection with the maintenance or operation of the same, together with the rents, issues, and profits of all the said property hereby demised and each any every part thereof:

To have and to hold all of the said railroads, premises, property, and appurtenances unto the said Danville Company, its successors and assigns, for its and their own proper use and benefit, from the first day of July, 1888, for the term of ninety-nine years then next ensuing; and the Danville Company during the said

term shall have the sole and exclusive right, power, and authority to hold, occupy, use, enjoy, control, manage, and operate the same, and to regulate, fix, vary, demand, collect, receive, and dispose of all and every the rates, tolls, revenues, and charges to accrue thereon or therefrom, subject, however, to the lien of all mortgages heretofore made by the said East Tennessee Company or assumed by it, or for the payment of which the said East Tennessee Company may be liable and subject or by which its property may be incumbered; also to all the valid covenants and agreements contained in contracts which may heretofore have been made by the said East Tennessee Company concerning the same, the said Danville Company, its successors or assigns, yielding and paying therefor to the said East Tennessee Company, its successors and assigns, at the times and in the manner hereinafter provided, the yearly rents hereinafter specified, and keeping and performing all and singular the covenants hereinafter set forth to be kept and performed by the said Danville Company.

Article second. The said East Tennessee Company further covenants and agrees that it or its successors shall and will, during the said term of ninety-nine years, preserve or renew and maintain its corporate existence and organization, and at all times during the said period, on demand of the said Danville Company, shall and will exercise and put in force each and every corporate power and franchise and do each and every corporate act necessary or desirable to carry out the provisions of this agreement and to enable the said party of the second part to avail itself of and use, exercise, and enjoy the rights, powers, and privileges hereby granted in respect to the said railway and other property aforesaid, and shall and will at any and all times, on demand, execute, acknowledge, and deliver to the said party of the second part such other and further instrument or instruments, in writing and under its corporate seal, as may be necessary or desirable better and more effectively to secure the purposes of this indenture.

Article third. The said East Tennessee Company further covenants and agrees to and with the said Danville Company that it will not hereafter, during the said period of ninety-nine years, enter into any contract, incur any debt or liability, or make or issue any bond or bonds, or obligation or obligations, or any deeds of trust, mortgages, or other security whatever, which shall in anywise be a lien on the property hereby dismised, other than extension bonds as aforesaid remaining unissued, except with the consent of the said Danville Company or except in renewal of its present indebtedness, bonded or otherwise.

Article fourth. The said East Tennessee Company agrees and stipulates with the said Danville Company that it will not sell or dispose of either the ownership or any equity that it may have in the stock of the Memphis and Charleston Railroad Company, amounting to the par value of two million six hundred and fifty-six thousand five hundred and twenty-five dollars, without the assent, first had and obtained, of the Danville Company.

And it further stipulates and agrees that it will cause its vote at

all meetings and at all elections for directors and officers of said Memphis and Charleston Railroad Company to be cast in such manner and for such person or persons as officers and directors as the board of directors of the Danville Company may by resolution direct it so to do.

Article fifth. The said East Tennessee Company further stipulates and agrees that it will not assign or sell the stock of the Mobile and Birmingham Railroad Company belonging to it, of the par value of one million five hundred and thirty thousand dollars, without the assent, first had, of the board of directors of the said Danville Company, and in like manner it agrees that at all meetings and at all elections for officers and directors of said Mobile and Birmingham Railroad Company it will cause its vote to be cast for such person or persons as it may be directed so to do by resolution of the board of directors of the said Danville Company.

Article sixth. The East Tennessee Company stipulates and agrees that it will not sell, assign, or dispose of the seven hundred and sixty-seven thousand dollars of the capital stock of the Knoxville and Ohio Railroad Company which it now owns without the assent of the said Danville Company, and said East Tennessee Company agrees that at all meetings and at all elections for officers and directors of said Knoxville and Ohio Railroad Company it will cause its vote to be cast in such manner and for such persons as said Danville Company may direct.

Article seventh. Whenever said Danville Company shall deem it for the best interests of the parties hereto that an extension shall be made of the East Tennessee, Virginia and Georgia railway said Danville Company shall request that the same be constructed or purchased, and in case the board of directors of the said East Tennessee Company acquiesce in said request of said Danville Company said East Tennessee Company shall construct or purchase said extension, and the cost of such extension shall be paid for by the sale by said East Tennessee Company, at such price as may be mutually agreed upon between said Danville Company and said East Tennessee Company, of so many of the extension mortgage bonds of the East Tennessee Company as shall at the time of the construction or purchase of said extension remain unsold; and when said bonds shall be so sold the interest thereon shall then and thereafter be deemed a fixed charge upon the property of the East Tennessee Company, the amount whereof shall be included in the guarantee made by said Danville Company, as set forth in article fourteenth of this agreement.

In case said Danville Company and said East Tennessee Company shall disagree whether or not the extension heretofore referred to is necessary that question shall be decided by arbitration, as hereinafter provided.

In the event that the power to issue bonds under said extension mortgage shall have been exhausted and an extension shall have been requested by said Danville Company, and the said East Tennessee Company acquiesces in the necessity thereof or the same shall have been determined by arbitration, the said East Tennessee Company shall then issue such bonds and debentures as it lawfully may

be empowered to do in order to provide the necessary means for the making of such extension, said bonds and debentures to be of such kind, character, and denomination as may be agreed upon by said companies, and to sell the same at such price as may be mutually determined, and the proceeds applied for the purposes aforesaid, and when so issued and sold the interest upon said bonds shall then and thereafter be deemed a fixed charge upon the property of the East Tennessee Company, the amount whereof shall be included in the guarantee made by said Danville Company, as set forth in article fourteenth of this agreement.

Article eighth. It is further stipulated and agreed that said East Tennessee Company may, with the assent first had and obtained of the Danville Company, purchase, upon such terms as may be mutually agreed upon and consented to by said Danville Company, the line of any railway or the controlling interest in the stock of any line of railway which may form an extension either of its own line or the lines in which it may own a majority of the capital stock, and the fixed charges thereby by said purchase incurred by the East Tennessee, Virginia and Georgia Railway Company by guaranteeing a dividend on the stock or the interest upon the bonds which may have theretofore been issued by the corporation owning the line so proposed to be purchased or otherwise acquired or controlled and the interest upon the bonds or the dividend on the stock thus guaranteed, which by reason thereof may become obligatory on and which shall be paid by said East Tennessee Company, shall be deemed a fixed charge on the property of the East Tennessee Company, as set forth in article fourteenth of this agreement.

It is further understood and agreed that if said East Tennessee Company shall construct or purchase any extension without the assent of the Danville Company the last-named company shall in nowise be responsible for the cost of construction or purchase of said extension or for the payment of any of the fixed charges arising therefrom.

Article ninth. Whenever the said Danville Company shall in writing demand of the said East Tennessee Company that betterments shall be made to the property hereby demised or acquired under the terms of this lease or for additional equipment to operate the same, and said East Tennessee Company shall be of opinion that said betterments should be made or that such additional equipment is necessary, said betterments shall be made or additional equipment provided, and the moneys necessary to pay for the same shall be provided by the said East Tennessee Company by the sale of such improvement and equipment bonds as may be on hand unissued, the issue of which has already been authorized by the board of directors of said East Tennessee Company under the terms and conditions of the improvement and equipment mortgage heretofore authorized to be executed by the board of directors of the East Tennessee Company to the Central Trust Company of New York, said bonds to be sold for such price as may be mutually agreed upon by said companies, and when so issued and sold the interest upon said bonds shall then and thereafter be deemed a fixed charge upon the

property of the East Tennessee Company, the amount whereof shall be included in the guarantee made by said Danville Company, as set forth in article fourteenth of this agreement.

In case said Danville Company and said East Tennessee Company shall disagree whether or not the betterments or the additional equipment hereinbefore referred to are requisite and necessary that question shall be decided by arbitration, as hereinafter provided. In the event that the power to issue bonds under said improvement and equipment mortgage shall have been exhausted and betterments or additional equipment shall still be required and necessary and shall have been requested by said Danville Company, and the said East Tennessee Company acquiesces in the necessity therefore or the same shall have been so determined by arbitration, the said East Tennessee Company shall then issue such bonds and debentures as it lawfully may be empowered to do in order to provide the necessary means for the procurement of such additional equipment or the making of such betterments, said bonds and debentures to be of such kind, character, and denominations as may be agreed upon by said companies, and to sell the same at such price as may be mutually determined, and the proceeds applied for the purposes aforesaid, and when so issued and sold the interest upon said bonds shall then and thereafter be deemed a fixed charge upon the property of the East Tennessee Company, the amount whereof shall be included in the guarantee made by said Danville Company, as set forth in article fourteenth of this agreement; and it is further understood and agreed that the lien of the mortgage or deed of trust heretofore authorized by resolution of the board of directors of the East Tennessee Company securing the six-million-dollars equipment and improvement bonds heretofore described shall be paramount and superior to any lien or rights acquired by the Danville Company under the terms and stipulations of this lease, but as to any debt that may hereafter be created by the East Tennessee Company without the consent of the Danville Company the lien created by the stipulations and covenants of this lease shall be paramount and superior.

Article tenth. It is further agreed by and between the parties hereto that the proceeds arising from the sale or other disposition of any bonds or other securities of the East Tennessee Company shall be applied solely for the purposes for which said bonds or securities were or may be created.

Article eleventh. In consideration of the premises the Danville Company hereby covenants and agrees that it will perform each, every, and all stipulations of every contract heretofore entered into or which may hereafter be made with its assent by said East Tennessee Company with whomsoever made and incumbent upon said East Tennessee Company to perform relating to or connected with said demised property, except the payment of its bonded indebtedness or the indebtedness hereinafter described in article sixteenth hereof, and will also pay to the East Tennessee Company as rental the following sums during the existence of this lease:

For two and one-half years from and after the first day of July,

1888, an annual rental equal to thirty-three per cent. of the annual gross earnings of the East Tennessee Company's property, as hereinbefore described, or which may hereafter become part thereof in pursuance with the stipulations herein contained.

For two years from and after the first day of January, 1891, an annual rental equal to thirty-four per cent. of the annual gross earnings of the East Tennessee Company's property, as hereinbefore described, or which may hereafter become part thereof in pursuance with the stipulations herein contained.

For three years from and after the first day of January, 1893, an annual rental equal to thirty-five per cent. of the annual gross earnings of the East Tennessee Company's property, as hereinbefore described, or which may hereafter become part thereof in pursuance with the stipulations herein contained.

For three years from and after the first day of January, 1896, an annual rental equal to thirty-six per cent. of the annual gross earnings of the East Tennessee Company's property, as hereinbefore described, or which may hereafter become part thereof in pursuance with the stipulations herein contained.

From and after the first day of January, 1899, annually until the expiration of the term of this lease, thirty-seven per cent. of the annual gross earnings of the East Tennessee Company's property, as hereinbefore described, or which may hereafter become part thereof in pursuance with the stipulations herein contained.

The fiscal year for ascertainment of the amount due and payable to the East Tennessee Company shall end on the thirtieth day of June of each and every year during the continuance hereof, and full payment of the amounts due hereunder shall be made, so far as the same can be approximately ascertained, within thirty days thereafter. On the first day of September of each and every year full, accurate, and complete statements of account shall be rendered by the Danville Company to the East Tennessee Company, the balance adjusted, and final payments made.

Article twelfth. The said Danville Company will at its own cost, risk, and expense during all the said term keep, preserve, and maintain the said railroad in as good working condition and repair as the same may be delivered to it, so as to be suitable for the transaction of all business which can reasonably be done thereon; and will in like manner maintain and preserve all the side tracks and station-houses; and will in like manner maintain in repair and condition all the fixtures, appurtenances, tools, and machinery pertaining to said railroad and all the property essential to and connected therewith hereby leased; and will in like manner at all times during the continuance of this lease maintain, renew, and preserve all the rolling stock and equipments hereby leased in as good repair and condition as the same now are, and when worn out or destroyed replace the same with new of equal aggregate value; and will in like manner at all times during the continuance of this lease run and operate the said railroad so as to do and perform in a proper manner all the business which can reasonably be secured for and done on the same with the rolling stock and equipment which shall be

furnished therefor; and will fully perform toward the public all the obligations due to it from the said party of the first part; and will as lessee maintain and run and operate the said railroad to the end that as large an amount of earnings and profits may be made and realized therefrom as can lawfully and reasonably be made and realized under the terms of this lease

Article thirteenth. As part of the rental aforesaid the said Danville Company will advance annually to the said East Tennessee Company the sum of twenty-four thousand dollars in quarterly installments for corporate maintenance of said East Tennessee Company, including therein salaries of its officers and counsel, the amounts thus advanced to be a credit to said Danville Company on account of rental and to be taken into account as such at each annual settlement.

Article fourteenth. The said party of the second part hereby guarantees that the annual rentals herein reserved shall always equal the sum which now is or hereafter may become necessary in each year to fully discharge all fixed charges upon the property of the East Tennessee Company as the same now are or may hereafter be increased by consent of the Danville Company in accordance with the stipulations herein contained and the interest upon its bonded indebtedness aforesaid and an annual dividend of five per cent. on the eleven million dollars of preferred stock of said East Tennessee Company; and said Danville Company hereby agrees that it will from time to time during each year advance and pay on account of the rental herein reserved to the treasurer of the East Tennessee Company sums sufficient to pay its interest upon its indebtedness or any other indebtedness for which it is or may become liable, which in accordance with the terms hereof may be assumed or created with the consent of the Danville Company as the same shall mature, said East Tennessee Company giving twenty days' notice in writing prior to the maturity of its liability of the amounts necessary to discharge and pay such interest, and said party of the second part agrees to pay the same to said East Tennessee Company in ample time to meet such obligations, the amount so paid to be credited to said Danville Company upon the rental reserved herein and payable by it to the said East Tennessee Company. For the sums so anticipated and paid no interest shall be allowed to said party of the second part.

And said Danville Company further agrees that if said annual rental herein reserved shall in any year be insufficient to pay the fixed charges, assessments, taxes, and dividends on preferred stock aforesaid it will make good and pay to the East Tennessee Company the amount of such deficiency, for which it shall have no claim against said East Tennessee Company.

Article fifteenth. The said Danville Company hereby covenants and agrees to and with the said East Tennessee Company that it will operate the said railways and manage the aforesaid properties in harmony as part of the same system and in the same manner as the said East Tennessee Company is now or may at any time during the existence of this lease be required by law to do, and will at

all times during the existence of this lease keep and preserve the said railways and the rolling stock, equipment, and appurtenances thereunto belonging in good repair, and if any of the same shall be destroyed in any way will replace the same, and will make such replacements and renewals as may be necessary, and the said East Tennessee Company shall at least once in each year, by a committee appointed by its board of directors, inspect said property, and at all times during the continuance of this lease have the right to examine and inspect the property hereby demised, and the property shall at all times be open to the inspection of the president of *of* the East Tennessee Company and such person or persons as he may appoint.

Article sixteenth. All indebtedness due and owing by said East Tennessee Company, as shown by balance-sheet of June 30th, 1888, under the head of operating expenses, shall be by the Danville Company discharged and paid, and in like manner all credits due to the East Tennessee Company, as shown by said balance-sheet, under the head of operating assets, shall be collected by said Danville Company and become its property, the debits and credits, as shown by said balance-sheet, as to correctness and collectibility, being guaranteed by the East Tennessee Company.

Article seventeenth. It is hereby mutually covenanted and agreed that the said Danville Company shall possess and exercise, with the express approval of the board of directors of said East Tennessee Company first had and obtained, all the rights, powers, and privileges now possessed or exercised by the said East Tennessee Company in respect to selling, leasing, or otherwise disposing of worn-out, unserviceable, or unnecessary rolling stock and equipment and other properties, real or personal, hereby demised, so far as such powers may be exercised in conformity with the provisions of the mortgages heretofore executed by said East Tennessee Company; and the said East Tennessee Company hereby covenants and agrees that it shall and will, at the request of the said Danville Company, from time to time during the period of this lease take such action as may be necessary or desirable to secure the consent and approval of the trustees under the said mortgages for the purpose of selling or disposing of such properties as aforesaid.

Article eighteenth. The said Danville Company further covenants and agrees that it will pay and discharge all expenses, cost, damages, claims, and demands whatsoever which shall or may arise out of its management and operation of said railroads and other properties hereby demised or any part thereof during the existence of this lease from the first day of July, 1888, and will and shall at all times during such period save and keep harmless and indemnify the said East Tennessee Company therefrom, and will defend at its own expense all such actions and suits which shall or may be brought against the said East Tennessee Company during said period, and will pay as operating expenses all taxes and assessments which may be lawfully levied or assessed upon the property hereby demised and upon the business or income of the same and upon the said East Tennessee Company in respect thereof.

Article nineteenth. The said Danville Company further agrees

that it will at all times during the continuance of this agreement keep accurate and detailed accounts of all moneys received and business done upon the said railways and in connection with the other property hereby demised and of all moneys paid out and liabilities incurred in connection with the said business, and such accounts shall at all reasonable times during the existence of this lease be open to inspection of the president and board of directors of said East Tennessee Company and such persons as he or they may from time to time appoint to examine the same, and the said Danville Company shall and will furnish the said East Tennessee Company with the usual monthly and annual statements which the said East Tennessee Company is now or may hereafter be obliged to make or file under the requirements of any lawful authority concerning the property hereby demised.

Article twentieth. At the termination of this lease, either by expiration or mutual consent, said Danville Company shall and will deliver up and surrender to the said East Tennessee Company the said railroads and other property hereby demised, assigned, or transferred, except such as shall have been sold, abandoned, or disposed of as hereinbefore provided, in at least as good order and condition as the reasonable use and wear thereof will permit, and with such additions, betterments, or improvements as shall have been made thereto.

And in case any of such property shall have been destroyed by the elements or worn out, then in lieu thereof other of equal aggregate value shall be substituted by said Danville Company and delivered to said East Tennessee Company.

A schedule of the rolling stock, equipment, and personal property hereby demised shall be made and delivered to said Danville Company within sixty days from the date hereof.

Article twenty-first. In case the said Danville Company shall at any time or times hereafter, during the existence of this lease, fail to pay the sums hereinbefore provided to be paid by the Danville Company, or any part thereof, when the same shall have become payable according to the terms hereof, or shall fail properly to maintain said railway in good and safe condition, or to maintain and renew its rolling stock and equipment as hereinbefore provided, and in case such default or failure shall continue for the period of thirty days after demand, then and in every such case it shall be lawful for the said East Tennessee Company, its successors or assigns, at their option, to enter without process of law into and upon the said railways and other property hereby demised and every part thereof, and to have and to hold all such property, together with all the additions and improvements which shall have been made to the same, and all the right, title, and interest whatever of the said Danville Company in and to the said property shall thereupon wholly cease and terminate; and it is further agreed that such re-entry shall not waive or prejudice any claim or right of the said East Tennessee Company to or for damages against the said Danville Company on account of such non-payment, or on account of any non-performance or breach of the terms of this indenture.

Article twenty-second. It is further understood and agreed that all disputes and differences arising at any time during the period of this lease as to the due performance by either of the parties hereto of any of the covenants herein contained or concerning any of the matters hereinbefore agreed to be submitted to arbitration shall be submitted to three arbitrators, one of whom shall be chosen by said East Tennessee Company, one by the said Danville Company, and the two so chosen shall choose the third, and the award of these arbitrators or any two of them shall be binding and conclusive upon the parties hereto in respect of the question submitted; but any differences arising as aforesaid shall not interrupt the business of the said railways, but such business shall continue as before until the question in dispute shall have been settled by the arbitrators as aforesaid, and thereupon such payments or restitution shall be made and such acts and things shall be done as may be required by the award of said arbitrators.

Either of the parties hereto desiring a submission to arbitration of any matter concerning the stipulations and provisions of this indenture shall notify the other party in writing of the matter which it desires to submit to arbitration. Within five days thereafter the party thus notified shall name its arbitrator and notify the other party of such selection, whereupon the party demanding the arbitration shall, within five days after the receipt of such notification, select and name its arbitrator and notify the other party thereof, and the arbitrators thus selected shall immediately proceed to select the third arbitrator, as aforesaid, and with him to consider and determine the matters submitted.

In case either party shall fail, upon due notification, to name an arbitrator, the arbitrator selected by the other shall have the right alone to proceed and determine the matters thus submitted, and his award shall be final and conclusive upon the parties hereto.

Article twenty-third. The said party of the second part hereby agrees to use each, all, and every exertion through its proper officers, servants, and agents to promote business upon the lines of said East Tennessee Company, and not divert traffic therefrom, and in all things cause the gross income arising from the operation of said lines of railroad to equal as large a sum as can consistently be earned from the business aforesaid, in accordance with the spirit of the stipulations and covenants of this lease.

In witness whereof the said East Tennessee, Virginia and Georgia Railway Company and the said Richmond and Danville Railroad Company, in pursuance of resolutions of their respective boards of directors, have caused their respective corporate seals to be hereto affixed, attested by their respective secretaries or assistant secretaries, and these presents to be signed by their respective presidents on the day and year first above written.

EAST TENNESSEE, VIRGINIA AND GEORGIA
RAILWAY COMPANY,
By SAMUEL THOMAS, *President.*

Attest: L. M. SCHWAN, *Secretary.*

RICHMOND AND DANVILLE RAILROAD COMPANY,
By GEORGE S. SCOTT, *President.*

Attest: A. J. RAUH, *Ass't Secretary.*

A true copy.

[Seal of C. C. U. S., East Dist. Tenn.]

Attest: H. H. TAYLOR, *Clerk,*
By J. T. CARTER, *D. C.*

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y Co. *et al.* } # 4389. Order for Injunction.

Be it remembered that, pursuant to notice, the application in this cause made by the complainants in their bill for injunctions and for a receiver came on to be heard before the chancellor, Henry R. Gibson, at the chancery court room, in Knoxville, Tennessee, on Friday, 16 November, 1888, and on that day and the following day was argued by counsel for the complainants, and the def't, The E. T., V. & G. R'y Co., upon the bill and exhibits and affidavits presented and filed in behalf of the said parties, and was taken — consideration by the chancellor until Saturday, 24 November, 1888.

And thereupon, on this the 24 November, 1888, the chancellor having considered of said applications upon said bill and exhibits, affidavits and argument, and upon the original charter of the E. T., V. & G. R'y Co., granted January 27th, 1848, and the act of Assembly, passed March 26, 1887, under which said Co. claimed the right and power to make the so-called lease to the def't, The Richmond & Danville Railroad Company, Exhibit "D" to the bill, and being of opinion that in said charter no right or power was conferred upon or granted to said E. T., V. & G. R'y Co. to make such lease, and that therefore no such right or power exists in its successor, the E. T., V. & G. R'y Co., and that by said act of Assembly of 1887 said railroad company is prohibited from making any lease to any corporation that is a competitor for the same business with said railway company; and it appearing from said bill, exhibits, and affidavits that the E. T., V. & G. R'y Co. and the Richmond & Danville Railroad Company are competitors for the same business:

Therefore the chancellor is pleased to order that upon the execution of an injunction bond by the complainants, with good and sufficient sureties, conditioned as required by law and with penalty in the sum of fifty thousand dollars, the clerk & master of this court issue writs of injunction as prayed for by complainants in the 4th and 6th prayers of their bill—

1. Restraining the E. T., V. & G. R'y Co. from approving or ratifying or in any way recognizing said so-called lease, or from making any lease or other transfer of its franchises or property to said Richmond & Danville Railroad Company; and,

2. Enjoining and restraining said Richmond & Danville R. R. Co. from doing any act whatever under said so-called lease, or in any way undertaking to operate, control, or manage the property or railroads of said E. T., V. & G. R'y Co.

The application for a receiver is continued, to the end that said railroad company may have opportunity in good faith to resume full and complete control of all property, franchises, rights, and interests intended to be embraced in the provisions of said so-called lease, and to faithfully discharge and perform all its charter duties as fully as before said so-called lease was signed and possession of said property, etc., given to said Richmond & Danville Railroad Company thereunder; failing which said application will be further considered and acted upon.

And thereupon said Richmond & Danville Railroad Co., by its solicitor, Pope Barrow, entered its appearance in open court as party defendant to said bill.

And said def'ts, The E. T., V. & G. R'y Co. and The Richmond & Danville Railroad Company, by their respective solicitors, asked for thirty days' time in which to file their several answers to said bill.

And, by consent of compl'ts, by their solicitors, said def'ts are allowed time till the 24th day of December proximo wherein to prepare and file their answers severally to said bill, but so as not to delay the hearing of this cause.

But none of the conclusions of law or fact hereinabove announced by the court are intended to preclude the court or parties to this suit at the final hearing of this cause.

Answer of E. T., V. & G. R. R. Co. Filed Dec. 24th, 1888. *W. L. Trent, C. & M.*

In the Chancery Court, Knoxville, Tennessee.

NICHOLAS THOURON and CHARLES SLIGO DE PONTHONIER and Others, Complainants,
against
EAST TENNESSEE, VIRGINIA & GEORGIA R'Y CO. *et al.*, Defendants.
No. 4389.

The answer of the defendant, The E. T., V. & G. R'y Company.

To the Hon. Henry R. Gibson, chancellor, &c.:

Now comes The E. T., V. & G. R'y Co., one of the defendants herein, and, without waiving any or all of the exceptions it may have to the many and manifest errors in complainants' bill, for answer to so much thereof as it is advised it is necessary for it to make answer unto, says:

First. That it has no knowledge, nor has this def't information enough upon which to found belief, as to the fact whether or not complainants are stockholders in the E. T., V. & G. R'y Co., owning the number of shares in paragraph set forth, and therefore denies the same and requires strict proof thereof.

Second. It denies the allegations contained in paragraph second, that it is a corporation of the States of Tennessee and Georgia; upon the contrary, it avers that it is a corporation of the State of Tennessee alone, and not of the State of Georgia. It admits that it owns and operates the railroad, property, and franchises of the E. T., V. & G. R'y Company, but whether or not the E. T., V. & G. R. R. Co. was a corporation created by consolidation, as in said second paragraph of complainants' bill set forth, it avers that it has no knowledge and requires strict proof thereof; and this def't makes the same answer as — the allegation in said paragraph that the said E. T., V. & G. R'y Co. acquired by purchase the railroad, property, rights, and franchises of the Cincinnati & Georgia Railroad Company and the Macon & Brunswick Railroad Company, corporations of the State of Georgia, and certain other additional railroad lines, rights, privileges, and franchises in the State- of Georgia, Alabama, and Mississippi as in said second paragraph of complainants' bill alleged, save as hereinafter admitted and set forth; but this defendant denies, as in said paragraph alleged, that the several lines of railroad owned, operated, and controlled by it constitute a system extending in a general northeastwardly and southwestwardly direction and engage in the transportation of freight and passengers to and from the New England and Middle States and Virginia and the parts of the North Atlantic seaboard, through the State of Tennessee, to and from the points in the State of Tennessee, the parts of the South Atlantic seaboard, the States of Georgia, Alabama, Mississippi, Florida, and Louisiana, the Gulf of Mexico, and the Mississippi river, and numerous points and places westwardly thereof, save in so far as that it is engaged in the transfer *and* freight and passengers over the lines of railroad operated and controlled by it as may present themselves or, as in the case of freight, is presented to it for the purpose of transportation and carriage over its various lines of railway.

Third. And, for answer to the allegations contained in the third paragraph of complainants' bill, this def't denies that the line extending from Rome, Ga., to Macon, Ga., was constructed and operated by it under the charter of the Cincinnati & Georgia Railroad Company. It knows nothing of the section set forth in said paragraph third, pretended to be quoted from the charter of the Cincinnati & Geogia Railroad Co., and therefore requires strict proof that said section is a section of the original charter of the Cincinnati & Georgia Railroad Company.

Fourth. This defendant denies that the railway of the E. T., V. & G. R'y Co. from Macon to Brunswick, Georgia, as in paragraph fourth of complainants' bill alleged, is owned and operated under and by virtue of the charter of the Macon & Brunswick Railroad Company or the several acts amendatory thereof, and also by virtue of the charter of the Cincinnati & Georgia Railroad Company and the several acts supplementary thereto and amendatory thereof; upon the contrary, this defendant avers that it operates said line of railroad as well as its line of railway from Rome to Macon, Georgia, solely by force and operation of its own charter, granted by the State of Tennessee, and of the inherent right which it possess- as such cor-

poration to operate lines of railroads in the State of Tennessee and elsewhere.

Fifth. And defendant, further answering, avers that so far as the allegations contained in paragraph five of complainants' bill is concerned that it has no knowledge whatsoever of the truth of the statements therein contained, and therefore requires strict proof thereof; but defendant denies that the E. T., V. & G. R'y Company became and is a domestic corporation of the State of Georgia, as in said paragraph alleged.

Sixth. Defendant admits the truth of the allegations contained in paragraph sixth.

Seventh. In reply to the allegations contained in paragraph seventh of complainants' bill, defendant denies that it has become or is a domestic corporation of the State of Georgia, or that, for all purposes of its business and operations in the State of Georgia, it is to be treated as a corporation under the laws of said State. It denies that it operates the railway in said paragraph seventh described under the charters, franchises, and powers granted to said railroad company in the State of Georgia; but, on the contrary, it avers that it owns and operates said railroad and is the possessor — their franchises so far as the same belongs to this defendant by virtue of its potentiality as an incorporated railroad of the State of Tennessee.

Eighth. And, further answering, the defendant avers that it has no knowledge or information upon which to found a belief whether the allegations contained in paragraph eighth of said complainants' bill are true, and therefore demands strict proof thereof.

Ninth. And, further answering, the defendant avers that it has no knowledge or information upon which to found a belief whether the allegations contained in paragraph ninth of said complainants' bill are true, and therefore demands strict proof thereof.

Tenth. And, further answering, the defendant avers that it has no knowledge or information upon which to found a belief whether the allegations contained in paragraph ninth of said complainants' bill are true, and therefore demands strict proof thereof.

Eleventh. And, further answering, this defendant denies the truth of the allegations contained in paragraph eleventh of complainants' bill.

Twelfth. And, further answering, defendant avers that it has no knowledge or information upon which to found a belief whether the allegations contained in paragraph twelfth of said complainants' bill are true, and therefore demands strict proof thereof.

Thirteenth. And, further answering, the defendant avers that it has no knowledge or information upon which to found a belief whether the allegations contained in paragraph thirteenth of said complainants' bill are true, and therefore demands strict proof thereof.

Fourteenth. And, further answering, this defendant avers that it has no knowledge or information upon which to found a belief whether the allegations contained in paragraph fourteen of complainants' bill are true, and therefore demands strict proof thereof.

Fifteenth. And, further answering, this def't avers that it has

no knowledge or information upon which to found a belief whether the allegations contained in paragraph — of said complainants' bill are true, and therefore demands strict proof thereof.

Sixteenth. And, further answering, this defendant avers that it has no knowledge or information upon which to found a belief whether the allegations contained in paragraph sixteen of said complainants' bill —, and therefore demands strict proof thereof.

Seventeenth. And def't, further answering, for reply to the allegations contained in paragraph seventeen, says that it admits that its board of directors, on or about the 17th day of October, 1888, agreed upon a lease of its railroad property and franchises to the Richmond and Danville Railroad Company, but it denies the allegations therein contained, that the said lease was made in order to destroy and prevent the competition for the same business in Tennessee, Georgia, and elsewhere between the lines owned, operated, and controlled by said companies. It admits that the possession of the property demised by the said lease was, on the said 17th day of October, 1888, delivered by this defendant to the said Richmond and Danville Railroad Company, but it avers that upon the — day of ——, 1888, in pursuance of an order of this court, it repossessed itself of and is now in full possession and control of said property. This defendant denies that it is a competitor for the same business in the State of Tennessee with the said Richmond and Danville Railroad Co. or with any line of railroad operated or controlled by the said Richmond & Danville Railroad Company.

Eighteenth. And, further answering, this def't avers that it admits that a majority of the E. T., V. & G. R'y Co., the Richmond and West Point Terminal Railway and Warehouse Company, and the Richmond and Danville Railroad Company are the same persons. This def't admits that the possession of its said lines of railroad was turned over to the Richmond & Danville Railroad Company without a vote first being had or authority first being given by the stockholders of the E. T., V. & G. R'y Co., but denies that the same was without authority of law. On the contrary, the def't avers that it was in strict compliance with the statutes of the State of Tennessee in such cases made and provided.

Nineteenth. This def't admits that, in accordance with said possession so surrendered by it, the Richmond & Danville Railroad Company did assume control of said lines of railroad, but that under an order of this court it has surrendered possession of the same; and this def't further avers that it is now in as full possession of said property as it was before the execution of said lease.

It admits the truth of the remaining allegations contained in paragraph nineteenth of complainants' bill.

Twentieth. In answer to the allegations contained in paragraph twentieth of said complainants' bill, this def't admits that Exhibit "D," attached thereto, is a true copy of the lease aforesaid, but it denies the same is without any authority of law, is contrary to public policy, and is in violation of the provisions of an act of the Assembly approved March 28th, 1887. On the contrary, this def't avers that such lease was made in strict compliance with law, in accordance

with public policy, and in full compliance with a statute of the State of Tennessee adopted March 28th, 1887. It denies that the said Richmond & Danville Railroad Company is a competitor for the same business in the State of Tennessee in any way, manner, or form.

Twenty-first. And, further answering, def't admits that the statute of the State of Tennessee approved March 28th, 1887, is correctly set forth therein.

Twenty-second. And, further answering, def't avers that it is not true, as in paragraph twenty-second of said bill alleged, that the directors of the E. T., V. & G. R'y Co. had no power or authority to make, execute, and deliver a lease of this def't railroad and other property and surrender possession thereunder without the precedent authority of a majority of the stockholders, obtained at a meeting duly called after sixty days' notice of the time, place, and purpose of such meeting. On the contrary, it avers that under the provisions of the statute aforesaid its board of directors had the right to make such lease and surrender the possession of said property prior to the authorization and approval of such lease by a vote of a majority in amount of its stock present or represented at a regular called meeting of the stockholders. This def't denies that the surrender of its property to the said Richmond & Danville Railroad Company without the prior and precedent authority of its stockholders was wholly without authority and unlawful and a surrender and betrayal of their duties and obligations as such directors. On the contrary, this def't avers that it had the perfect right to do so, and in so doing the corporation and its board of directors was acting in strict compliance with the laws of the State of Tennessee.

This defendant alleges that it was perfectly competent for it and its board of directors to make such lease, to surrender the possession of the property so leased to the lessee, then giving the sixty days' notice required by statute to its stockholders, who thereafter might approve or reject the same, as in the judgment of the said stockholders they might deem best.

Twenty-third. And, further answering, this def't denies each and every allegation contained in paragraph twenty-third of said bill.

Twenty-fourth. This def't, further answering, says that it admits the terms of agreement for the reorganization of the E. T., V. & G. R'y Company, so far as the selection of its board of directors is concerned, is in said paragraph correctly stated, and that the Richmond & West Point Terminal Railway and Warehouse Company is the holder of sixty-five thousand shares of first preferred stock, which constitutes a majority of its whole issue of first preferred stock; but it denies that the said Richmond & West Point Terminal Railway and Warehouse Company hold them to enable it to control the election and management of this defendant; or that it is not impossible for the stockholders other than the said Richmond & West Point Terminal Railway and Warehouse Company to make any change of its board of directors or to prevent the approval of the lease aforesaid as against the control of so large a majority of the first preferred stock held and con-

trolled by the lessee therein named. On the contrary, it avers that the capital stock of the E. T., V. & G. R'y Co. amounts to the sum of fifty-seven millions of dollars, of which eleven millions is in first preferred stock and eighteen million and five hundred thousand dollars is in second preferred stock and twenty-seven million and five hundred thousand dollars is in common stock, and, upon a full vote of the stockholders of the said E. T., V. & G. R'y Company, the said sixty-five thousand shares owned and held by the Richmond and West Point Terminal Railway and Warehouse Company should constitute instead of a majority but a very small minority, and it would not be possible for the said Richmond & West Point Terminal Railway and Warehouse Company with the said Richmond and Danville Railroad Company, by virtue of its or either of their ownership in stock of this defendant, to approve said — against the wishes of the stockholders of the said company. Defendant, further answering, avers, as a matter of fact, that the directors of the E. T., V. & G. R'y Company are in nowise controlled, either directly or indirectly, by the Richmond & Danville Railroad Company or by the Richmond & West Point Terminal Railway and Warehouse Company; but, on the contrary, def't avers that the members of said board are men of independent judgment, and exercise the same, irrespective of their connection with either the Richmond & Danville Railroad Company or the Richmond & West Point Terminal Railway and Warehouse Company, in the management of the affairs of the E. T., V. & G. R'y Co. It further avers that the terms of said lease are greatly more advantageous to the E. T., V. & G. R'y Co. than they are to the Richmond & Danville Railroad Company, is largely in excess of what any other corporation or person would or could pay, and much more than the E. T., V. & G. R'y Co. can, for many years to come, earn by operating its own line of railway, and avers that the Richmond & Danville Railroad Company is thus able to pay said rental and made said lease profitable to themselves because of the large amount of freight and long haul thereof which said Richmond & Danville Railroad Company will have supplied to it from the lines of the said E. T., V. & G. R'y Company and its connections in excess of what said Richmond & Danville Railroad Company has been heretofore receiving from this defendant.

This def't denies each and every allegation in said paragraph twenty-fourth of complainants' bill contained.

Twenty-fifth. And in answer to the allegations contained in paragraph 25th, this def't says that the power of electing a majority of the board of directors of the E. T., V. & G. R'y Company, exclusively vested in the first preferred stock of the said railway company by the terms of the reorganization agreement, was not intended to give the board of directors elected by said vote any limited powers, but was destined and intended to give the said board of directors so as aforesaid elected all the rights, powers, and privileges which a board of directors might, could, or would have at any and all times the right to exercise.

This def't denies each and every allegation in said article 25th contained.

Twenty-sixth. And def't, further answering, denies each and every and all the allegations contained in paragraph twenty-sixth of said complainants' bill, and denies that there is any fixed guarantee contained of dividends upon the first preferred stock, as therein alleged; but, on the contrary, state that by the terms of said lease no provision whatsoever is made for the payment of any dividends upon said first preferred stock; that the stipulations of said lease fix as a minimum rent to be paid by the Richmond and Danville Railroad Company a sum equal to all the fixed charges resting upon the property of this defendant and five per cent. dividends upon its first preferred stock of eleven million five hundred thousand dollars, but that nowhere in said lease is there any stipulation or covenant upon the part of this def't that the amount thus paid as a minimum of rent shall by this def't be applied to the payment of said dividend; that the minimum payment to be made as rental for said leased property is thus fixed, but when so paid by the Richmond & Danville Railroad Company to this def't its distribution and how the same shall be made rests entirely in the discretion of the directors of the def't company, the amount thus received by way of rental being paid into its treasury.

Twenty-seventh. This def't, further answering, denies each and every allegation contained in the twenty-seventh paragraph of complainants' bill.

Twenty-eighth. And, further answering, this def't admits that the allegations contained in section 28th, as to the number of miles of railroad owned by it in the State of Ga., is true, but denies that it is a corporation of the State of Georgia or that it operates its railroads within that State by virtue of the laws thereof or is subject to the provisions of its statutes; and this def't further denies that it is subject to the provisions of the act of the General Assembly of Georgia approved Sept. 27th, 1881, and in said paragraph 28th of complainants' bill fully set forth.

Twenty-ninth. And def't, further answering, states that it denies that it holds and enjoys its rights and privileges in the State of Georgia, as in said paragraph twenty-nine set forth, or that it would become the duty of the attorney general to institute proceedings to forfeit the rights of this def't within that State, or that by any proceedings of the attorney general of the State of Georgia the rights of complainants herein would suffer great and irreparable injury or any damage of any kind whatsoever.

Thirtieth. And this def't, further answering, denies that its directors, who united in the authorizing of said lease and those associated with them, allege and claim that they control a majority of the shares of this defendant, or that they will be able to vote the requisite majority at the meeting to be held on the 22d day of December, 1888, to consider the question of authorizing the said lease. On the contrary, this def't avers that neither it nor said directors nor said complainants know or have any means of knowledge how a majority of the stock of the defendant corporation will be cast at

said meeting. This defendant denies that it will not be competent for the stockholders of the def't Co. at said meeting to make and execute said lease, as the same would be in disregard and violation of the provisions of the constitution and laws of the State of Georgia, and particularly of the eighteenth section of the charter of the Cincinnati & Georgia Railroad Company, and it would subject the property of said company within the State of Georgia to proceedings of forfeiture at the suit of the attorney geaeral of that State, and that thereby the value of the complainants herein would be impaired and rendered comparatively worthless.

Thirty-first. And, further answering, def't denies each and every allegation contained in paragraph 31st of complainant-' bill filed herein, and avers that if complainants have any grievance or any lawful complaint to make against the action of this def't in connection with said lease, or of its board of directors, or to this defendant, complete and adequate remedy will be afforded to them and each and all of them.

Thirty-second. And, further answering, this defendant avers that these complainants are not maintaining this suit nor have they brought the same for the purpose of redressing any wrong or injury that they or either of them have sustained; but, on the contrary, def't avers that the same has been instituted, prosecuted, and instigated nominally in the names of complainant, but really for the benefit of the Norfolk & Western Railroad Company, a corporation in the State of Virginia; that the said Norfolk and Western Railroad Company is a competitor for business in the State of Tennessee and elsewhere with the Richmond & Danville Railroad Company; that for a long time it has been enjoying extensive privileges afforded to it by the E. T., V. & G. R'y Co.; that ever since the completion of the E. T., V. & G. railroad, in 1881, until recently the Norfolk & Western railroad was its only eastern outlet, and the territory served by this def't and its patrons were obliged to submit to such extortions in rates as said Norfolk & Western railroad might inflict; that recently the Richmond & Danville Railroad Company has opened another line to Paint Rock from the eastern seaboard, giving another eastern outlet to this def't and its patrons, and has put that line in condition for through business; that the Norfolk & Western Railroad Company has, as this def't is informed and believes, caused this litigation to be begun and carried on, and has done various other things for the purpose of annoying and harassing the E. T., V. & G. management, as well as that of the Richmond & Danville and Richmond & West Point Terminal Companies, and for the sole object of compelling an exclusive interchange of business by the E. T., V. & G. R'y with the Norfolk and Western Company, and excluding the Richmond and Danville and Richmond & West Point Terminal Companies, to the detriment of the East Tennessee Company and of the interest of the citizens along its line, depriving them of facilities for the lawful interchange of business.

That neither this def't nor the Richmond & Danville Railroad Company, as this def't is informed and believes, has any desire for any exclusive interchange of business between themselves, but only

an opportunity for a fair exchange of business between def't, The Richmond & Danville Railroad Co., and the Norfolk and Western Railroad Company.

And def't further avers that great numbers of passengers and a large amount of freight have been transferred to the lines of the Norfolk and Western Railroad Company at Bristol, in the State of Tennessee, by this def't, whereby the said Norfolk & Western Railroad Company has been enabled to make and earn large sums of money; and def't avers that the said Norfolk and Western Railroad Company, fearing that by the execution of said lease aforesaid its competitor in business, the Richmond & Danville Railroad Company, may be enabled to direct to its lines a portion of the passengers and freight so as aforesaid heretofore delivered to said Norfolk & Western Railroad Company, that the latter, so as to defeat the success of its rival and competitor, the Richmond & Danville Railroad Company, and to prevent a fair exchange of business, has caused this suit to be brought in order to avoid said lease.

This def't avers that this suit has neither been instituted nor is being prosecuted in the interest of complainants, but that the same is being carried on nominally in their names for the benefit of the Norfolk & Western railroad; that the chief solicitors in this suit are the solicitors in New York & Philadelphia of the Norfolk & Western Railroad Company; def't avers and charges, therefore, that this suit is not being prosecuted and maintained in good faith by complainant- for their own benefit, but that they are lending themselves to the Norfolk and Western Railroad Company in its prosecution, in which latter-named company complainants and each of them are large stockholders and have large interests.

Thirty-third. And def't, answering, avers that the lease as aforesaid complained of — complainants' bill is in all respects satisfactory to a large majority of the stockholders in defendant's company, as it verily believes that its terms and stipulations are greatly beneficial to each and every stockholder of the E. T., V. & G. R'y Company; that the same was made in good faith by its board of directors. Every step which the directors have taken in reference thereto they have been guided by the sole desire to advance the interests of the E. T., V. & G. R'y Co., and have sought to take a course which would redound to the interest of the said Co. in strict compliance with law.

Wherefore, upon final hearing hereof, defendant prays that the injunction heretofore allowed *pendente lite* may be dissolved; that complainants' bill herein may be dismissed, and that it may go hence without day and recover its costs herein expended.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY,
By HOADLEY, LAUTERBACH & JOHNSON,
WM. M. BAXTER, &
ANDREWS & THORNBURGH, *Its Solicitors.*

EVAN M. JACKSON,
WM. M. BAXTER,
GEORGE ANDREWS,
J. M. THORNBURGH, *Of Counsel.*

STATE OF NEW YORK, }
County of New York, } *ss:*

Samuel Thomas makes oath and says that he is president of the East Tennessee, Virginia & Georgia Railway Company, a corporation duly organized under the laws of the State of Tennessee; that the allegations contained in the foregoing answer are true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes them to be true. Affiant further states that he has caused hereunto to be affixed and to said answer the corporate seal of said company.

SAMUEL THOMAS.

Subscribed in my presence and sworn to before me this 18th day of December, 1888.

L. F. SULLIVAN,
Notary Public, Kings County.

Certificate filed in New York city.

Answer of Richmond & Danville Railroad Company. Filed Jan'y 25th, 1889, by Order Court as of Dec. 29, 1889. W. L. Trent, C. & M., by W. A. Galbraith, D. C. & M.

In the Chancery Court, Knoxville, Tennessee.

NICHOLAS THOURON and CHARLES SLIGO DE POTHONIER and Others, Complainants,
against
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO. *et al.*, Def'ts.

The answer of the def't, The Richmond & Danville Railroad Company.

To the Hon. Henry R. Gibson, chancellor:

Now comes The Richmond & Danville Railroad Co., one of the defendants herein, and, without waiving all or any of the exceptions it may have to the many and manifest error in complainants' bill, for answer to so much thereof as it is advised it is necessary for it to make answer unto, says—

First. That it has no knowledge, nor has this def't information enough upon which to found belief, as to the fact whether or not complainants are stockholders in the E. T., V. & G. R'y Co., owning the number of shares in paragraph first set forth, and therefore *desires* the same and requires strict proof thereof.

Second. That it has no knowledge, nor has this def't information enough upon which to found a belief, as to the allegations contained in paragraph second, and therefore requires strict proof thereof.

Third. That it has no knowledge, nor has this def't information enough upon which to found a belief, as to the allegations contained in paragraph third of complainants' bill, and therefore demands strict proof thereof.

Fourth. That it has no knowledge, nor has this def't information upon which to found belief, as to the allegations contained in paragraph fourth of complainants' bill, and therefore demands strict proof thereof.

Fifth. That it has no knowledge, nor has this def't information upon which to found belief, as to the allegations contained in paragraph fifth of complainants' bill, and therefore desires strict proof thereof.

Sixth. That it has no knowledge, nor has this def't information enough upon which to found belief, as to the allegations contained in paragraph sixth of complainant's bill, and therefore demands strict proof thereof.

Seventh. That it has no knowledge, nor has this def't information enough upon which to found belief, as to the allegations contained in paragraph seventh of complainants' bill, and therefore demands strict proof thereof.

Eighth. Defendant, further answering, says that it admits the allegations in paragraph eighth of complainants' bill so far as the same relates to the lines of railroad leased by this def't, but it denies that it is engaged in the transportation of freight and passengers to and from the New England and Middle States and Virginia and the ports of the North Atlantic seaboard through the State of Tennessee, the ports of the South Atlantic seaboard, the States of Georgia, Alabama, Mississippi, Florida, and Louisiana, the Gulf of Mexico and Mississippi river, and numerous points and places westwardly thereof, but, on the contrary, it simply asserts that it has engaged in the transportation of such passengers and freight as are delivered to it and its leased lines for carriage over said lines of railroad.

Ninth. And, further answering, defendant avers that it has no knowledge or information upon which to found belief whether the allegations contained in paragraph ninth of said complainants' bill are true, and therefore demands strict proof thereof.

Tenth. And, further answering, def't avers that it has no knowledge or information upon which to found belief whether the allegations contained in paragraph tenth of said complainants' bill are true, and demands strict proof thereof.

Eleventh. And, further answering, this def't denies that its line of railroad is a competitor with the E. T., V. & G. R'y Co. or with the lines of railroads operated and controlled by it for the same business. Defendant, further answering, denies every other allegation contained in said paragraph.

Twelfth. Def't, further answering, denies each and every allegation contained in paragraph twelfth of complainants' bill.

Thirteenth. Defendant, further answering, denies each and every allegation contained in paragraph thirteenth of complainants' bill.

Fourteenth. Defendant, further answering, denies each and every allegation contained in paragraph fourteenth of complainants' bill.

Fifteenth. Defendant, further answering, denies each and every allegation contained in paragraph fifteenth of complainants' bill.

Sixteenth. Defendant, further answering, denies each and every allegation contained in paragraph sixteenth.

Seventeenth. Defendant, answering, for reply to the allegations contained in paragraph seventeenth of complainants' bill, says that it admits that its board of directors, on or about the 17th day of October, 1888, agreed upon a lease of the railroad property and franchises of the E. T., V. & G. R'y Co.; but it denies the allegation therein contained that the said lease was made in order to destroy and prevent competition for the same business in Tennessee, Georgia, and elsewhere between the lines owned, operated, or controlled by said companies. It admits that the possession of the property demised by the said lease was, on the said 17th day of October, 1888, delivered by the E. T., V. & G. R'y Co. to this def't; but it avers that upon the — day of ——, 1888, in pursuance of an order of this court, it surrendered possession of said property, and the same is now in the full control and possession of the said E. T., V. & G. R'y Company. This def't denies that it is a competitor for the same business in the State of Tennessee with the said E. T., V. & G. R'y Co. or with any line of railroad operated or controlled by it.

Nineteenth. This def't admits the allegations contained in paragraph nineteenth of complainants' bill so far as the same sets forth the names of the directors of the Richmond & West Point Terminal Railway and Warehouse Company, the E. T., V. & G. R'y Co., and the Richmond and Danville Railroad Co., save that Alfred Sully and Emanuel Lehman are not directors of the E. T., V. & G. R'y Co., and E. J. Sanford and W. S. Chisholm are, and save that in the board of directors of the def't Co. Emanual Lehman has ceased to be a member and John H. Hall has become a member thereof.

Twentieth. In answer to paragraph twentieth of complainants' bill def't admits that Ex. "D," attached to complainants' bill, is a true copy of the lease aforesaid. It denies each and every other allegation in said paragraph twentieth contained.

Twenty-first. Def't, further answering, admits that the statute of Tennessee approved March 28th, 1887, is correctly set forth.

Twenty-second. Def't, further answering, denies each and every allegation contained in paragraph twenty-second of complainants' bill.

Twenty-third. Def't, further answering, denies each and every allegation contained in paragraph twenty-third of complainants' bill.

Twenty-fourth. Def't, further answering, says it has no knowledge whereon to found a belief as to the allegations contained in paragraph twenty fourth of complainants' bill, and therefore denies.

Twenty-fifth. Def't, further answering, says it has no knowledge sufficient to found a belief as to the allegations contained in paragraph twenty-fifth of compl'ts' bill, and therefore denies the same.

Twenty-sixth. Def't, further answering, denies each and every and all the allegations contained in paragraph twenty-sixth of said complainants' bill, and denies that there is any fixed guarantee contained in the said lease of dividend upon the first preferred stock of the E. T., V. & G. R'y Co., as therein contained, but, on the contrary, states that by the terms of such lease no provision whatsoever is

made for the payment of any dividend upon said first preferred stock; that the stipulations of lease fix as a minimum rent to be paid by the Richmond & Danville Railroad Company a sum equal to all the fixed charges resting upon the property of the E. T., V. & G. R'y Co. and five per cent. dividend upon the first preferred stock of eleven million five hundred thousand dollars, but that nowhere in said lease is there any stipulation or covenant upon the part of the E. T., V. & G. R'y Co. that the amount thus paid as a minimum of rent shall be by the said E. T., V. & G. R'y Co. applied to the payment of said dividend; that the minimum payment to be paid as rental for rental of said leased property is thus fixed, but when so paid by this def't to the E. T., V. & G. R'y Co. its distribution and how the same shall be made rests entirely in the discretion of the directors of the E. T., V. & G. R'y Co., the amount thus received by way of rental being paid into its treasury.

Twenty-seventh. This def't, further answering, denies each and every allegation contained in paragraph twenty-seventh of complainants' bill.

Twenty-eighth. Def't, further answering, says that it has no information sufficient whereon to found a belief as to the allegations contained in paragraph twenty-eighth of complainants' bill, and therefore denies the same.

Twenty-ninth. Def't, further answering, says that it has no information sufficient whereon to found a belief as to the allegations contained in paragraph twenty-ninth of complainants' bill, and therefore denies the same.

Thirtieth. Def't, further answering, says that it has no information sufficient whereon to found a belief as to the allegations contained in paragraph thirtieth of complainants' bill, and therefore denies the same.

Thirty-first. Def't, further answering, says that it has no information sufficient whereon to found a belief as to the allegations contained in paragraph thirty-first of complainants' bill, and therefore denies the same.

Thirty-second. And further answering this def't avers that these complainants are not maintaining this suit nor have they brought the same for the purpose of redressing any wrong or injury that they, either of them, have sustained; but, on the contrary, this def't avers that the same *be* instituted, prosecuted, and instigated nominally in the names of compl'ts, but really for the benefit of the Norfolk & Western Railroad Company, a corporation of the State of Virginia; that the said Norfolk & Western R. R. Co. is a competitor for business in the State of Tennessee and elsewhere with this def't; that for a long time it has been enjoying extensive privileges afforded to it by the E. T., V. & G. R'y Co.; that ever since the completion of the E. T., V. & G. R'y, in 1881, until recently the Norfolk & Western railroad was its only Eastern outlet, and the territory served by the E. T., V. & G. R'y Co. and its patrons were obliged to submit to such extortions in rates as said Norfolk & Western railroad might inflict; that recently the Richmond & Danville Railroad Company has opened another line to Paint Rock from the Eastern seaboard,

giving another Eastern outlet to the E. T., V. & G. R'y Co. and its patrons, and has put that line in condition for through business; that the Norfolk & Western Railroad Company has, as the def't is informed and believes, caused this litigation to be begun and carried on and has done various other things for the purpose of annoying and harassing the E. T., V. & G. management, as well as that of the Richmond & West Point Terminal Railway and Warehouse Co. and the Richmond & Danville Company, and for the sole object of compelling an exclusive interchange of business by the E. T., V. & G. R'y with the Norfolk & Western Company and excluding the Richmond & Danville and Richmond & West Point Terminal Companies, to the detriment of the East Tennessee Company and of the interests of the citizens along its line, depriving them of facilities for the lawful interchange of business; that neither this def't nor the E. T., V. & G. R'y Co., as this def't is informed and believes, has any desire for an exclusive interchange of business between themselves, but only an opportunity for a fair exchange of business between def't, the E. T., V. & G. R'y Co., and the Norfolk & Western Railroad Company; and def't further avers that great numbers of passengers and a large amount of freight have been transferred to the lines of the Norfolk & Western Railroad Company at Bristol, in the State of Tennessee, by the E. T., V. &. R'y Co., whereby the said Norfolk & Western Railroad Company has been enabled to make and earn large sums of money; and def't avers that the said Norfolk & Western R. R. Co., fearing that by the execution of said lease aforesaid its competitor in business, the Richmond & Danville R. R. Co., may be enabled to divert to its lines a portion of the passengers and freight so as aforesaid heretofore delivered to said Norfolk & Western R. R. Co., that the latter, so as to defeat the success of its rival and competitor, the Richmond & Danville Railroad Company, and to prevent a fair exchange of business, has caused this suit to be brought in order to avoid the said lease.

Def't avers that this suit has neither been instituted nor is being prosecuted in the interest of complainants, but that the same is being carried on nominally for the benefit of the Norfolk & Western Railroad Company; that the chief solicitors in this suit are the solicitors in New York and Philadelphia of the Norfolk & Western R. R. Co. Def't avers and charges, therefore, that this suit is not being prosecuted and maintained in good faith by complainants for their own benefit, but that they are lending themselves to the Norfolk & Western R. R. Co. in its prosecution, in which latter-named Co. complainants and each of them are large stockholders and have large interests.

Thirty-third. Def't, further answering, avers that the lease as aforesaid complained of in complainants' bill is, as it is informed and believes, in all respects satisfactory to a large majority of the stockholders of the E. T., V. & G. R'y Co., as it verily believes that its terms and stipulations are greatly beneficial to each and every stockholder of the E. T., V. & G. R'y Co.; that the same was made in good faith by the board of directors of both the E. T., V. & G. R'y Co. and the Richmond & Danville railroad.

Thirty-fourth. Def't, further answering, says that it denies each and every allegation contained in complainants' bill not hereinbefore specifically mentioned.

Wherefore, upon final hearing hereof, def't prays that the injunction heretofore allowed herein *pendente lite* may be dissolved; that complainants' bill herein may be dismissed, and that it may go hence without day and recover its costs herein expended.

THE RICHMOND & DANVILLE
RAILROAD COMPANY,
By GEO. F. SCOTT, *President.*

HOADLEY, LAUTERBACH & JOHNSON,
BURROW & THOMAS, *Solicitors.*
TAYLOR & HOOD, *Sol's.*
EDGAR M. JOHNSON,
POPE BURROW, *Counsel.*

STATE OF NEW YORK, }
County of New York, } *ss:*

George S. Scott makes oath and says that he is president of the Richmond & Danville Railroad Company, a corporation duly organized under the laws of the State of Virginia; that the allegations contained in the foregoing answer are true of his knowledge except as to matters therein stated on information and belief, and as to those matters he believes them to be true. Affiant further states that he has caused hereunto to be affixed and to said answer the corporate seal of said company.

GEO. S. SCOTT.

Subscribed in my presence and sworn to before me this 22nd day of December, 1888.

JAMES J. MURPHY,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

Petition of A. G. Sharp. Filed Dec. 1st, 1888. W. L. Trent, C. & M., by W. A. Galbraith, D. C. & M.

In the Chancery Court of Knox County, Tennessee.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.* } No. 4389.

To the Hon. Henry R. Gibson:

Your petitioner, A. G. Sharp, respectfully shows unto your honor that he is a resident of Chattanooga, Hamilton county, Tennessee, and is the owner in his own right of fifty shares of the common stock of the E. T., V. & G. R'y Co., and as such he desires to become a party co-complainant in the above-entitled suit and bear his pro-

portion of the expenses thereof and share the benefits sought thereby.

To that end petitioner prays to be allowed to become a co-complainant in said suit and join in the prayer for relief therein prayed; as in duty bound, etc.

A. G. SHARP.

Sworn to and subscribed before me Dec. 1st, 1888.

W. A. GALBRAITH, *D. C. & M.*

Circuit Court of the United States for the Eastern District of Tennessee.

NICHOLAS THOURON, CHARLES SLIGO DE POTHONIER, Trading as C. Sligo de Pothonier & Co.; Frederick J. Burt, Trading as Frederick Burt & Co.; William J. Barr, and A. G. Sharp, Plaintiffs,

against

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, a Corporation Existing under the Laws of the State of Tennessee and Georgia, and Richmond & Danville Railroad Company and Richmond & West Point Terminal Railway & Warehouse Company, Corporations Existing under the Laws of the State of Virginia; John H. Inman, Samuel Lehman, Calvin S. Brice, C. M. McGhee, T. M. Logan, George F. Stone, George S. Scott, John A. Rutherford, James Swann, James B. Pace, Simon Wormser, Edward Lauterbach, John H. Hall, John C. Calhoun, W. S. Chisholm, J. O. Moss, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., George Coppell, Thomas P. Fowler, James E. Granniss, H. C. Fahnestock, J. C. Maben, John S. Barbour, Samuel N. Inman, Defendants.

Petition to Remove Cause so Entitled from State Court.

To the honorable the judges of the circuit court of the United States for the eastern district of Tennessee:

Your petitioner, The Richmond & Danville Railroad Company, respectfully shows—

That it is one of the defendants in the above-entitled suit, which has not been tried, but is now pending for trial in the chancery court, Knoxville, Tennessee, and it desires to remove the same into the circuit court of the United States for the eastern district of Tennessee.

Your petitioner further states that in the said above-mentioned suit there is a controversy between a citizen the State of Tennessee, in which the said suit is brought, and a citizen of another State, to wit, a controversy between your petitioner, who avers that it was at the commencement of the said suit and still is a citizen of the State of Virginia, and the said A. G. Sharp, among others complainants, who, your petitioner avers, was at the commencement of the said suit

and still is a citizen of the State of Tennessee, in which the said suit was brought, and that the amount involved in the said controversy exceeds, exclusive of costs, the sum of two thousand dollars.

Your petitioner further avers that both the said A. G. Sharp and your petitioner are actually interested in the said controversy.

Your petitioner further states that from prejudice and local influence your petitioner will not be able to obtain justice in said State court nor in any other State court in which your petitioner may under the laws of the State have the right on account of such prejudice or local influence to remove said cause.

That said suit was brought for the purpose of enjoining the E. T., V. & G. R'y Co., its officers, agents, servants, and directors, from leasing its line of railway in the State of Tennessee to your petitioner, and to enjoin and restrain the stockholders of the E. T., V. & G. R'y Co. from approving the terms of lease made by the said E. T., V. & G. R'y Co. to your petitioner, and for other and further relief, as in said bill set forth.

Your petitioner therefore prays that the said affidavit attached may be accepted as good and sufficient, and that said suit may be removed to the said circuit court of the United States for the eastern district of Tennessee, and to the end also that the said removal may be perfected, and that such order be made in the premises as the nature of the case may require.

THE RICHMOND & DANVILLE
RAILROAD COMPANY,
[SEAL.] By W. G. OAKMAN, *Vice-President.*

HOADLEY, LAUTERBACH & JOHNSON,
BARROW & THOMAS AND R. N. HOOD,
Sol's for Petitioner.

UNITED STATES OF AMERICA, }
Southern District of New York. }

I, Walker G. Oakman, being duly sworn, do say that I am vice-president of the Richmond & Danville Railroad Company, a corporation organized under the laws of the State of Virginia and a citizen of said State; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true.

W. G. OAKMAN.

Sworn to and subscribed before me this 18th day of January, 1889.

GEORGE W. VULTEE,
[SEAL.] *Notary Public* (49), *C. & C. of N. Y.*

In the Circuit Court of the United States for the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
against
EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

I, Walker G. Oakman, being duly sworn, do say that I am the vice-president of The Richmond & Danville Railroad Company, one of the defendants in the above-entitled action; that said railroad is a corporation created under and by virtue of the laws of the State of Virginia and a citizen thereof; that from prejudice and local influence said Richmond & Danville Railroad Company will not be able to obtain justice in the chancery court, Knoxville, Tennessee, or in any other State court in which said defendants, The Richmond & Danville R. R. Co., might under the laws of the State have the right on account of such prejudice and local influence to remove said cause.

W. G. OAKMAN.

Sworn to and subscribed before me this 18th day of January, 1889.

[SEAL.]

GEORGE W. VULTEE,
Notary Public (49), *C. & C. of N. Y.*

Upon the filing of the foregoing petition and affidavit, and upon petitioner entering into bond for costs as required by law, the clerk of the United States circuit court for the eastern district of Tennessee, at Knoxville, will enter an order of record in said cause to the effect that it appears to the court from said petition and affidavits thereto attached that from prejudice and local influence petitioner will not be able to obtain justice in the chancery court of Knox county, Tennessee, or in any other State court to which said petitioner as defendant may or could under the laws of the State of Tennessee have the right on account of such prejudice or local influence to remove said cause, and that it is therefore entitled to have the removal which it seeks, and it is accordingly ordered that said cause be, and the same is hereby, ordered to be removed from the chancery court of Knox county to this court, and that notice of this order be served upon said chancery court of Knox county, and that said court and the clerk thereof be requested to furnish, upon application of petitioner, a copy of the record on file in said cause to be filed in this court.

Jan. 25, 1889.

HOWELL E. JACKSON,
Circuit Judge.

(Endorsed:) Filed Jan'y 28th, 1889. H. H. Taylor, clerk, by J. T. Carter, D. C.

Be it remembered that at a circuit court of the United States began and held for the northern division of the eastern district of Tennessee, at the court-house, in the city of Knoxville, within said district and the sixth circuit, on the 2nd Monday, it being the 14th day, of January, A. D. 1889—present and presiding, the Hon. D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee—the following proceedings were had, to wit:

MONDAY MORNING, *January 28th*, 1889.

Court met pursuant to adjournment.

Present and presiding: Hon. D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

NICHOLAS THOURON *et al.*
vs.
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY.
} No. —. Order upon Petition for Removal.

It appearing to the court from the petition filed in this cause and the affidavits thereto attached that from prejudice or local influence petitioner, The Richmond & Danville Railroad Company, will not be able to obtain justice in the chancery court of Knox county, Tennessee, or in any other State court to which said petitioner as def't may or could under the laws of the State of Tennessee have the right on account of such prejudice or local influence to remove this cause, and that it is therefore entitled to have the removal which it seeks—

It is accordingly ordered that this cause be and the same is hereby, removed from the said chancery court of Knox county to this court, and that notice of this order be served upon said chancery court of Knox county, Tennessee, and that said court and the clerk thereof be and is requested to furnish, upon application of petitioner and the payment of the lawful fees therefor, a copy of the records on file in said court in this cause to be filed in this court.

SATURDAY, *Feb'y 2nd*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. Henry R. Gibson, chancellor.

The record of Saturday last was read, approved, and signed, and the following additional proceedings were had, to wit:

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.*
} # 4389.

Be it remembered that this cause came on to be heard before the Hon. Henry R. Gibson, chancellor, upon all the proceedings heretofore had in this cause, but more especially upon a transcript of an order made by the United States circuit court for the northern division of the eastern district of Tennessee removing the cause from this court to said United States circuit court, which transcript is in the words and figures following:

Be it remembered that at a circuit court of the United States begun and held for the northern division of the eastern district of Tennessee, at the Federal court-rooms, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 14th day, of January, A. D. 1889—present and presiding, the Hon. D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee—the followings — were had, to wit:

MONDAY MORNING, *January 28th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. D. M. Key, judge, &c.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.*

Order upon Petition for Removal.

It appearing to the court from the petition filed in this cause and the affidavits thereto attached that from prejudice or local influence petitioner, The Richmond & Danville R. R. Co., will not be able to obtain justice in the chancery court of Knoxville, Knox county, Tennessee, or in any other State court to which said petitioner as def't may or could under the laws of the State of Tennessee have the right on account of such prejudice or local influence to remove this cause, and that it is therefore entitled to have the removal which it seeks, it is accordingly ordered that this cause be, and the same is hereby, removed from said chancery court of Knox county to this court upon petitioner going bond, with security, in the sum of one thousand dollars, which is accordingly done, and that notice of this order be served upon said chancery court of Knox county, Tennessee, and that said court and the clerk thereof be and is requested to furnish, upon application of petitioner and payment of lawful fees therefor, a copy of the record on file in said court in this cause to be filed in this court.

EASTERN DISTRICT OF TENNESSEE, *ss:*

I, H. H. Taylor, clerk of the United States circuit court for said district, do hereby certify that the foregoing is a full, true, and perfect copy of an order made in this cause mentioned in the caption as the same appears of record in my office. Witness my hand and official seal this 30th day of January, 1889.

H. H. TAYLOR, *Clerk*,
By J. T. CARTER,
Deputy Clerk.

The court is therefore pleased to decree that the clerk and master of this court at once proceed to make a full, true, and perfect transcript of the record in this cause to be filed in said United States circuit court, and that all further proceedings in this cause in this court be suspended so long as this cause may remain in said United States circuit court or until it shall be remanded to this court.

WEDNESDAY MORNING, *January 30th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.*

Motion to Remand to Chancery Court.

This case having been removed to this court by an order made by Judge Jackson, in chambers, and entered of record on a former day of this term—

The plaintiffs come and, by their attorneys, in open court move the court to remand said cause to the chancery court of Knox county, Tennessee, for the following reasons:

1st. Because the allegations of the petition and statements contained in the affidavits are untrue.

2nd. Because the affiant, W. G. Oakman, is a non-resident of the State of Tennessee and does not and cannot know that any prejudice or local influence exist- in the State of Tennessee against the defendants in this cause.

3rd. Because the affiant, W. G. Oakman, fails to state that he knows the state of feeling among the citizens of Tennessee towards def'ts in this cause.

4th. Because the application for removal to this court is not made in time.

5th. Because there is no prejudice or local influence which will prevent the defendants in this cause from obtaining justice in the chancery court of Knox county or any other State court of Tennessee.

Plaintiffs are given reasonable time in which to answer the petition filed herein for removal.

(Endorsed:) Entered on Record Book "K," page 139, Jan'y 30th, 1889.

No. 4389.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et.al.*

Petition to Remand.

To the honorable the judges of the circuit court of the United States for the northern division of the eastern district of Tennessee:

The petition of Nicholas Thouron respectfully represents—

First. That your petitioner, who then was and still is a citizen of

Pennsylvania, and in conjunction with C. Sligo de Pothonier, trading as C. de Pothonier & Co., and Frederick J. Burt, trading as Frederick Burt & Co., then and now aliens and subjects of the Queen of Great Britain, and William J. Barr and Edmund Allen, then and now citizens of the State of Pennsylvania, brought the suit (No. 4417), which has since been removed to your honorable court, against the East Tennessee, Virginia and Georgia Railway Company, then and now a corporation existing under the laws of the State of Tennessee, and the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, then and now corporations existing under the laws of the State of Virginia, and John H. Inman, Samuel Thomas, John G. Moore, Calvin S. Brice, C. M. McGhee, George S. Scott, W. J. Chisholm, Alfred Sully, John Greenough, Wm. L. Bull, Richard Irvin, Jr., George Coppell, Thomas P. Fowler, and James E. Grannis, then and now citizens of the State of New York, and T. M. Logan and John S. Barbour, then and now citizens of the State of Virginia, and E. J. Sanford, then and now a citizen of the State of Tennessee.

Third. That subsequently one A. G. Sharp was improperly and collusively made or joined a party plaintiff without communication with the solicitors of the original plaintiffs, nor has he since taken any part in the prosecution of the said suit. The said Sharp was so improperly and collusively made a party plaintiff, at the instance of the defendants, for the sole purpose of endeavoring to create a case removable to this court.

Fourth. Your petitioner further shows that it is not true that from prejudice or local influence the defendants would not be able to obtain justice in the chancery court of Knox county, Knoxville, Tennessee.

Fifth. Your petitioner further shows that it appears upon the face of the petition for removal and the record that the suit is one not removable to this court under the last clause of the second section of the act of March 3d, 1887.

Your petitioners therefore pray that the said case be remanded.

And your petitioners will ever pray.

UNITED STATES OF AMERICA,
East. Dist. of Pennsylvania, City and County of Philadelphia, } *ss:*

Nicholas Thouron, being duly sworn according to law, deposes and says that the facts set forth in the above petition so far as they are stated upon his knowledge are true, and so far as stated upon the information of others he believes them to be true.

NICHOLAS THOURON.

Witness my hand and notarial seal this 8th day of March, 1889.

SAMUEL PAUL, [SEAL.]
U. S. Commissioner.

Petition to remand.

A true copy.

Attest: H. H. TAYLOR, *Clerk*, [SEAL.]
By J. T. CARTER, *D. C.*

Endorsed: No. 4389. Ex. "A." Thouron *et al. vs.* E. T., Va. & Ga. R'y Co. *et al.* Petition to remand. Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

No. 4389.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Surmotion to Remand.

To the honorable the judges of the circuit court of the United States for the northern division of the eastern district of Tennessee:

And now, March —, A. D. 1889, Nicholas Thouron, Frederick J. Burt, trading as Frederick Burt & Co.; William J. Barr, Edmund Allen, and Edmund P. Dwight, by Ingersoll & Peyton, their solicitors, move to remand the above case to the chancery court of Knox county, Tennessee, for reasons heretofore filed, and beg leave to assign the following additional reasons:

First. Because the said A. G. Sharp was improperly and collusively joined as a party plaintiff to this suit (No. 4417) for the purpose of creating a case removable to this court from the said State court, and has not united with these plaintiffs at their request or with their consent nor for the *bona fide* purpose of prosecuting the said suit, but at the instance of the defendants to enable them to oust the said State court of its jurisdiction and to remove said suit to this court upon the fraudulent semblance of a controversy between him and said defendants.

Second. Because the said A. G. Sharp was not a party to the suit at the commencement thereof.

Third. Because the said A. G. Sharp is not now and never has been a party plaintiff, inasmuch as he has not complied with the terms and conditions precedent upon which he was permitted to become a party plaintiff thereto, in this, that he had not at the time of the presentation and filing of said petition for removal signed and united in the bond of the plaintiffs for the prosecution of this suit in the said chancery court of Tennessee, as required by the terms of the order permitting him to become a party.

Fourth. Because the said A. G. Sharp did not become a party to the said suit before the trial thereof.

Fifth. Because there is no matter in dispute between the said A. G. Sharp, citizen of Tennessee, plaintiff, and the said Richmond and Danville Railroad Company and The Richmond and West Point Terminal Railway and Warehouse Company, citizens of Virginia, defendant-, which exceeds, exclusive of interest and costs, the sum or value of $2,000.

Sixth. Because the controversy between the said Sharp and the defendants is not one of which this honorable court could take original cognizance.

Seventh. Because, a decree *pro confesso* having been entered against The Richmond and Danville Railroad Company, defendant, before the filing of the petition for removal, the removal was too late.

Eighth. Because the petition and affidavit were both sworn to January 18th, 1889, at which time, as appears by the record, a decree *pro confesso* had been entered and was then in force against the said Richmond and Danville Railroad Company.

Ninth. Because certain of the parties plaintiff and certain of the parties defendant were at the time of the filing the petition for removal citizens of the State of Tennessee.

Tenth. Because certain of the parties plaintiff were at the time of filing the bill and still are aliens.

Eleventh. Because it appears upon the face of the petition for removal and the record that the suit is one of which this court cannot obtain jurisdiction by removal under the last clause of the second section of the act of March 3d, 1887, and that the order of removal is *coram non judice* and void.

Motion to remand.

A true copy.
Attest: H. H. TAYLOR, *Clerk*,
By J. T. CARTER, *D. C.* [SEAL.]

(Endorsed:) No. 4389. Ex. "B." Thouron *et al. vs.* E. T., Va. & Ga. R'y Co. *et al.* Motion to remand. Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

No. 4389.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

And now, March 8th, A. D. 1889, come the plaintiffs, Nicholas Thouron, Frederick J. Burt, trading as Frederick Burt & Co.; William J. Barr, and Edmund Allen, and, by protestation, not confessing or acknowledging the petition to remove this cause from the chancery court of Knox county, Knoxville, Tennessee, to be true, for plea to the jurisdiction of this court, say—

That this court ought not to take further cognizance of this suit (No. 4417), because this suit does not involve a dispute or controversy between a plaintiff citizen of Tennessee, in whose court the suit was brought, to wit, A. G. Sharp, and a defendant citizen of the State of Virginia, to wit, The Richmond and West Point Terminal

Railway and Warehouse Company or The Richmond and Danville Railroad Company; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, said plaintiffs say—

That there is no matter in dispute between A. G. Sharp, plaintiff, and the said Richmond and West Point Terminal Railway and Warehouse Company or The Richmond and Danville Railroad Company, citizens of the State of Virginia, defendant, which exceeds, exclusive of interest and costs, the sum or value of $2,000; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, said plaintiffs say—

That the said A. G. Sharp was improperly and collusively joined as a party plaintiff to this suit for the purpose of creating a case removable to this court from said State court, and that he has united with these plaintiffs without their request or consent and not for the *bona fide* purpose of prosecuting said suit, but merely in form and at defendants' request so as to enable defendants to oust said State court of its jurisdiction and to remove said suit to this court; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, the plaintiffs say—

That of the original plaintiffs at the time the bill was filed and this controversy begun Nicholas Thouron, William J. Barr, and Edmund Allen were then and still are citizens of the State of Pennsylvania, and Charles Sligo de Pothonier, trading as C. Sligo de Pothonier & Co., and Frederick J. Burt, trading as Frederick Burt & Co., were then and still are aliens and subjects of the Queen of Great Britain, and the East Tennessee, Virginia and Georgia Railway Company and E. J. Sanford were then and still are citizens of the State of Tennessee, and the other parties defendant were then and still are citizens of the States of Virginia and New York; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, these plaintiffs say—

That it is not true that from local influence or prejudice that the defendants will not be able to obtain justice in the said State court; and this they are ready to verify.

Wherefore plaintiffs pray that the order of removal heretofore made be vacated, and that this suit be remanded to the chancery court of Knoxville, Tennessee.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Nicholas Thouron, being duly sworn says that the foregoing pleas are not interposed for delay and are true in point of fact.

NICHOLAS THOURON.

Sworn and subscribed to before me this 8th day of March, A. D. 1889.

SAMUEL PAUL,
U. S. Commissioner.

We hereby certify that in our opinion the foregoing pleas are well founded in point of law.

Pleas to remand.

A true copy.

Attest: H. H. TAYLOR, *Clerk*, [SEAL.]
By J. T. CARTER, *D. C.*

Endorsed: No. 4389. Ex. "C." Thouron *et al. vs.* E. T., Va. & Ga. R'y Co. *et al.* Pleas to remand.
(Stamped:) Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

MONDAY MORNING, *May 13th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. Howell Jackson, judge of the United States circuit court for the sixth judicial circuit.

NICHOLAS THOURON *et al.*
vs.
THE E. T., V. & G. R'Y CO. *et als.* } No. —. In Equity.

This cause came on to be heard before Hon. Howell E. Jackson, circuit judge, presiding and sitting in equity, on the 6th day of April upon the motion and petition of the compl'ts, Nicholas Thouron and others, heretofore filed, to remand the same to the chancery court at Knoxville, and was argued by counsel and taken under advisement by the court.

And on this 27th day of April, 1889, it appearing from the records of this cause and the admissions of counsels at the hearing that while the petitioner and present compl't, A. G. Sharp, is a citizen of Tennessee, and the petitioner and def't, The Richmond & Danville Railroad Company, is a citizen of Virginia, the original compl'ts in this cause were all non-residents of Tennessee and either citizens of Pennsylvania or aliens, the court is of opinion that this cause was improperly removed to this court, which cannot take jurisdiction of the same, and that said motion to remand it is well taken and should be sustained.

It is accordingly ordered and adjudged that this suit be, and the same is hereby, remanded to the chancery court of Tennessee for Knox county, at Knoxville, and that all costs of this cause accrued in this court be paid by the petitioner, def't, The Richmond & Danville Railroad Company, and R. N. Hood, surety on its bonds for removal, for which execution is awarded.

The clerk of this court will forthwith make out and certify a transcript of all records and proceedings made and had in this court in this cause and deliver the same to the clerk and master of said chancery court of Tennessee, at Knoxville, the costs of which will be taxed as hereinbefore decreed. On the hearing of this motion the deposition of A. G. Sharp, W. A. Galbraith, H. B. Brauner, J. M. Meek, W. M. Hood, J. M. Thornburgh, and E. J. Sanford were not

read or considered, and they will not be copied into any transcript the clerk may make.

And the def't, The Richmond & Danville R. R. Co., prays an appeal from the decree to next term of the Supreme Court of the United States, at Washington, D. C., which appeal is granted under the provisions of the act of Feb'y 25th, 1889, on the ground that the court has no jurisdiction of the cause, said def't having executed an appeal bond *so* required by law.

Approved.

HOWELL E. JACKSON,
Circuit Judge.

The clerk will enter like decree in the Richmond & West Point Terminal Railway and Warehouse Company.

HOWELL E. JACKSON,
Circuit Judge.

(Endorsed:) Entered May 13, 1889, Record Book "K," page 159.

Motion.

(Entered on same day as decree.)

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'y Co. *et al.*

In this cause the complainants, Nicholas Thouron and others, by their solicitors, Ingersoll & Peyton, move the court to vacate the order heretofore entered in this cause granting to the def'ts, The Richmond & Danville R. R. Co., an appeal to the Supreme Court from the decree remanding this cause to the chancery court of Tennessee, at Knoxville, on the grounds—

1. That no appeal lies from such interlocutory order.
2. That appeal in such case is expressly prohibited by the removal acts of March 3, 1887, and August 13, 1888.

Make same entry in the other case also, substituting for "Richmond & Danville R. R. Co." "Richmond & West Point Terminal Railway and Warehouse Company."

This order may be entered in both cases.

R. N. HOOD, *Sol.*

(Endorsed:) Entered May 13, 1889, Book "K," page 160.

Be it remembered that at a circuit court of the United States began and held for the northern division of the eastern district of Tennessee, at the Federal court-room, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 8th day, of July, A. D. 1889—present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee—the following proceedings were had, to wit:

THURSDAY MORNING, *July 18th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge, &c.

NICHOLAS THOURON *et al.*
vs.
EAST TENN., VA. & GA. R'Y CO. *et al.* } In Equity. No. 843.

The motion of the complainants to vacate the order of the court allowing an appeal from the decree remanding this cause to the State court was considered by the court, and on consideration was overruled and disallowed.

The clerk of the court will therefore proceed forthwith as required by law to make up and transmit the proper transcript of record to the Supreme Court.

FILED
FEB 3 1890
JAMES H. MCKENNEY,
CLERK.

No. 1262. October Term, 1889.

Supreme Court of the United States.

Richmond & Danville Railroad Co. Appellant,

vs.

Nicholas Thouron, et. al., Appellees.

Appeal from the Circuit Court of the United States, for the Eastern District of Tennessee.

Brief for Appellant on the Motion of Appellees to dismiss the Appeal for want of Jurisdiction.

Hoadley, Lauterbach & Johnson.
Taylor & Hood.
Barrow & Thomas.
For Appellant.

SUPREME COURT OF THE UNITED STATES

The Richmond and Danville Railroad Company, Appellant,

vs

Nicholas Thouron et al., *Appellees.*

October Term, 1889
No. 1262.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TENNESSEE.

BRIEF FOR APPELLANT ON THE MOTION OF APPELLEES TO DISMISS THE APPEAL FOR WANT OF JURISDICTION.

THE CASE.

The complainants, some being citizens of the State of Pennsylvania, and others aliens, on behalf of themselves and on behalf of all other stockholders in the East Tennessee, Virginia and Georgia Railway Company, who are similarly situated, and who might choose to come in and share in the benefit and expense of the suit, filed their bill in equity in the Chancery Court of Knoxville, Tennessee, against the East Tennessee, Virginia and Georgia Railway Company, a corporation of Tennessee, the Richmond & Danville Railroad Company, and the Richmond and West Point Terminal Railway and Warehouse Company, corporations of Virginia, and the various directors of these three corporations, some of whom were citizens of the State of New York, some of the State of Virginia, one of the State of Tennessee, and one of the State of Georgia.

The purpose of the bill was to restrain the Richmond & Danville Railroad Company from operating and controlling the

East Tennessee, Virginia and Georgia Railway under and by virtue of a lease, and to restrain the East Tennessee, Virginia and Georgia Railway Company from approving the said lease or authorizing or executing the same. The gravamen of the bill was the attack upon the lease and the relief prayed was the injunction to prevent the Richmond & Danville Railroad Company from operating the East Tennessee, Virginia and Georgia Railway under the lease. The only allegations in the bill which relate to the Richmond & Danville Railroad Company are to the effect that the lease is void for various reasons and that the Richmond & Danville Railroad Company ought to be prevented by injunction from operating the East Tennessee, Virginia and Georgia Railway thereunder. The only prayer in the bill for any relief against the Richmond & Danville Railroad Company is for an injunction against maintaining the possession, and operating and using the railroads, property and franchises of the East Tennessee, Virginia and Georgia Railway Company, or doing any act whatever under the authority of said lease.

As the parties stood when the bill was filed two of the defendants, viz: the East Tennessee, Virginia and Georgia Railway Company, a corporation of Tennessee, and one of the individuals named as defendant, were citizens of the State of Tennessee. The other parties were non-residents,

Collaterally and as incidental to the main issue the bill prayed for an injunction to restrain the Richmond and West Point Terminal Railway and Warehouse Company from voting the shares of stock owned by it in the East Tennessee, Virginia and Georgia Railway Company at a meeting to be held, December 22nd, 1888, of the shareholders, or at any other meeting which might be held for the purpose of approving the lease. This was in no manner dependent upon the main issue between the complainants and the Richmond & Danville and did not affect the controversy between them. A decision or a decree upon it was rendered wholly unnecessary by the decree which the Court rendered upon the main question.

The application in this bill for an injunction came on to be heard before the Chancellor at Knoxville, November 16th, 1888. The Chancellor being of the opinion that no right was conferred upon the East Tennessee, Virginia and Georgia Railway Com-

pany to make the lease in question and that said contract of lease was in conflict with the Act of the Assembly of Tennessee of 1887, granted the relief prayed for and restrained the East Tennessee, Virginia and Georgia Railway Company from approving or ratifying or in any way recognizing the lease, or from making any lease or transfer of its franchise or property to the Richmond & Danville Railroad Company, and :

'2. Enjoining and restraining said Richmond & Danville Railroad Company from doing any act whatever under said so-called lease or in any way undertaking to operate, control or manage the property or railroads of the East Tennessee, Virginia and Georgia Railway Company."

At this hearing upon the motion of complainants solicitors J M. Meek, a citizen of Tennessee, was made a party complainant.

Subsequently upon his own motion H. B. Branner, a citizen of Tennessee, was made a party complainant.

Both of these parties were stockholders in the East Tennessee, Virginia and Georgia Railway Company.

Later A. G. Sharp, also a citizen of Tennessee and a stockholder in the East Tennessee, Virginia and Georgia Railway Company upon his own petition was made a party complainant to the bill.

Afterwards the Richmond & Danville Railroad Company filed its answer under the provisions of a consent order as of December 24th, 1888. [Record p. 50.]

Subsequently the Richmond & Danville Railroad Company presented a petition and affidavit to the Circuit Court of the United States for the Eastern District of Tennessee, praying a removal of the suit to the Circuit Court upon the ground of prejudice and local influence, alleging that there was a controversy existing between the said A. G. Sharp and the petitioner. [Record p. 56.]

Upon this petition and affidavit the order of removal was granted. [Record p. 58 & 59.]

Thereupon the complainants filed :

1. A motion to remand.
2. A petition that the case be remanded.
3. A plea to the jurisdiction of the Circuit Court. [Record pages 61-65.]

Upon the hearing the Court declined to permit the issue of the existence of prejudice and local influence to be submitted.

The amount in controversy not being dependent upon the number of shares held by Mr. Sharp, or the market value thereof, but being measured by the money value of the lease, which was to be set aside, no notice was taken of the amount of Mr. Sharp's individual interest.

As the order to remand was based upon the record and the situation of the parties as disclosed thereby, the suggestion of complainants that Mr. sharp was collusively joined was not considered.

The case was remanded upon the ground that while present complainant, A. G. Sharp, is a citizen of Tennessee, and the petitioner and defendant, the Richmond & Danville Railroad Company is a citizen of Virginia, the original complainants in this cause were all non-residents of Tennessee.

An appeal was allowed to the Richmond & Danville Railroad Company under the provisions of the Act of February 25th, 1889, "on the ground that the Court has no jurisdiction of the cause."

As will be seen from the order remanding the case and from the opinion of the Judge reported in 38 Federal Reporter, 673, the action of the Court in remanding the case was based upon the fact that some of the complainants were non-residents of Tennessee. Construing the Act of 1887, in the light of previous legislation the Court reached the conclusion that all the parties on the opposite side of the case, from the party seeking to remove the cause upon the ground of prejudice and local influence, must be residents of the State, in order to give the Circuit Court jurisdiction by removal.

Brief.

I. An order to remand is final whenever the action previously taken in the State Court has substantially disposed of the case upon the merits and under the Act of February 25th 1889, whenever the order is based upon the ground of a want of jurisdiction an appeal will lie.

The question submitted to the Judge of the Circuit Court by the motion to remand and the plea to the jurisdiction expressly involved the jurisdiction of the court. Whether or not the decree rendered thereon was final, depends upon the character of the case and upon what had previously transpired in the State

Court. While the decree which had been rendered by the Chancellor in the State Court was not technically a final decree closing the record of the suit, still it substantially and practically put an end to the litigation and finally determined the only issue which affected the defendant, the Richmond & Danville Railroad Company.

The merits of the controversy between the Richmond & Danville Railroad Company and the complainants had been finally determined and disposed of by the order of the chancellor. There was but one question made by the pleadings in the case which affected the Richmond & Danville Railroad Company, viz: the validity of the lease and the right to possess and operate the railroad under it. This was finally settled and determined by the order of the Chancellor. When, therefore, the question of jurisdiction was decided adversely to the defendant by the Circuit Judge and the cause remanded, the case was at an end.

Under the Act of February 1889, an order to remand which involves the question of jurisdiction is to be considered final whenever the situation of the case in the State Court is such as would authorize an appeal if the decree entered there had been entered in the Circuit Court.

A brief review of the cases which relate to this question will exhibit the true character of the decree in the State Court in this case.

In the case of French vs. Shoemaker, 12 Wall, 86, an injunction had been granted ~~by the State Judge~~ restraining the defendant from taking possession of a railroad under a contract and from any use of the name and the title. From this order an appeal was taken.

The court says: (p. 98) "Unquestionably the whole law of the case was settled by the Chief Justice in that decree and as nothing remains to be done, unless a new application shall be made at the foot of the decree, the court is of the opinion that the decree is a final one, as it has conclusively settled all the legal rights of the parties involved in the pleadings."

In Whitenbury, vs. U. S., 5 Wall, 819, a claim which had been interposed in a libel filed for the condemnation of large quantities of cotton and other property as a prize of war was dis-

missed. It was held to be final as to the claimant, because to use the language of the Chief Justice:

"It left nothing to be litigated between these parties," (p. 821)

In Thomson vs. Dean, 7 Wall, 342, a decree which decided the right of property in controversy, and directed it to be delivered to the complainant by transfer, was held to be final, although it left to be adjusted the accounts between the parties in pursuance of the decree settling the question of ownership.

In Milwaukee & Minnesota Railroad Company vs. Soutter, 2 Wall, 440, an order of the Circuit Court in a bill to foreclose a mortgage and stating the amount of interest due on the mortgage directing payment within one year and providing for an order of sale in default of payment within one year was held to be final as against any person aggrieved by error in said interest.

In Bronson vs. Railroad Co., 2 Black, 524, and in Whiting et. al. vs. the Bank of the U. S., 13 Peters, 15, it was held that a decree of foreclosure and sale of mortgaged premises is final in the sense that an appeal will lie. In Bronson vs. the Railroad Company. Mr. Justice Davis speaking for the court (p. 531,(says:

"This decree is not final in the strict technical sense of the word, for something yet remains for the court below to do. But as was said by Chief Justice Taney, in Forgay, vs. Conrad, (6 Howard, 203,) 'this court has not therefore understood the words "final decrees," in this strict and technical sense, but has given to them a more liberal, and as we think a more reasonable construction, and one more consonant to the intention of the Legislature.' "

In Whiting vs. Bank of the U. S. 13 Peters, Mr. Justice Story speaking for the Court (p. 15) says: "The original decree of foreclosure and sale was final upon the merits of the controversy."

The court had before it the question, whether the decree, could only be deemed final after the sale by a further order of the court or whether the decree of foreclosure and sale is to be considered as final in a Court of Equity. As has been seen, the conclusion was adopted that it was final in that sense upon the ground that it disposed practically and substantially of the merits of the controversy.

In Forgay, et. al. vs. Conrad, 6 Howard, 204, Chief Justice Taney, speaking for the court says:

"And when the decree decides the right to the property in contest, and directs it to be delivered up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such a decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by a further decree the accounts between the parties pursuant to the decree passed."

In Beebe, et. al. vs. Russell, 19, How, 285, the court speaking through Mr. Justice Wayne says:

"When a decree finally decides and disposes of the whole merits of the cause, and reserves no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its final decision, it is a final decree. It is true a decree may be final although it directs a reference to a Master, if all the consequential directions depending upon the result of the Master's report are contained in the decree, so that no further decree of the court will be necessary, upon the confirmation of the report, to give the parties the entire and full benefit of the previous decision of the court.

In the Farmers Loan & Trust Co., 129, U. S., 206 an order of a Circuit Court authorizing the receiver of mortgaged property to borrow money and create a lien was held to be a final decree from which an appeal might be taken.

Mr. Justice Miller speaking for the court says:

"This order comes within all the elements of finality which we can imagine to belong to a decree of the Circuit Court. It establishes certain rights of the parties to the injury, as petitioners believe, of their interest in the property."

In Williams vs. Morgan, 111 U. S., 684, a decree fixing the compensation of trustees was held to be final as to that matter and that an appeal might be taken. In this case the appellants were intervenors.

Mr. Justice Bradley speaking for the court says: (p. 699).

"That the order was such as could be appealed from we think

is equally apparent. It was final in its nature and was made in a matter distinct from the general subject of litigation—a matter by itself which affected only the parties to the particular controversy and those whom they represented."

In Winthrop Iron Company, vs. Meeker, 109 U. S., 180, a decree setting aside the lease of the Iron Company and appointing a receiver to continue the business until the further order of the Court and directing an accounting before a Master and reserving such further directions as may be necessary to carry the decree into effect, and concerning costs, that may be equitable and just was held to be final within the meaning of Section 692 of the Revised Statutes.

The Chief Justice speaking for the Court says: (p. 183) "The whole purpose of the suit has been accomplished. The lease made under the authority of the meeting of October, 1881, has been cancelled, and the management of the affairs of the Company has been taken from the board of directors, a majority of whom were elected at that meeting, and committed to a receiver appointed by the court."

Again on page 184, the Chief Justice says:

"Here the rights of the Hematite Company and the defendant directors of the Iron Company have been adjudicated and definitely settled. Their lease which was in reality the subject matter of the action, has been cancelled and a delivery of the leased property to the Iron Company has been ordered."

Undoubtedly if the decree in this case had been rendered in the Circuit Court of the United States instead of in the State Court the defendants would have been entitled to an appeal. We contend therefore, inasmuch as the order remanding the case was decided upon the question of jurisdiction and had the effect to continue in force the decree in the State court, that under the Act of February 1889, the order to remand was substantially a final decree involving the question of jurisdiction. It may be replied that there is no difference between the situation of the case in the State Court and in the Circuit Court of the United States if the case had not been remanded, but the answer to this is that under the Act of 1889, the order remanding the case involves a question of jurisdiction and the effect of the order was finally to dispose of the case upon the merits.

II. As to the right of removal after such an order the case

stands upon different principles. The right of the defendant ~~order~~ exists until the "trial." Whatever may be the effect of an order granted prior to the trial as to the final disposition of the case the case is removable until the trial, upon the ground of local prejudice.

Hess vs. Reynolds, 113, U. S. 80.

Lewis vs. Smyth, 2 Woods, 117, 118, 119.

III. It remains to examine more narrowly the Act of February 25th, 1889, and consider its effect. Obviously a change in the law was intended. Keeping in view and giving due weight to the policy indicated in the Act of 1875, providing for appeals from orders remanding causes and which continued in force for twelve years and was then repealed by the Act of 1887, it is a fair inference that it was the intention by the Act of 1889 to reinstate the provision so far at least as to give an appeal from every judgment involving the jurisdiction of the Circuit Court.

The Act of 1889, is in these words:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED: That in all cases where a final judgment or decree shall be rendered in a Circuit Court of the United States in which there shall have been a question involving the jurisdiction of the Court, the party against whom the judgment or decree is rendered shall be entitled to an appeal or writ of error to the Supreme Court of the United States to review such judgment or decree without reference to the amount of the same; but in cases where the decree or judgment does not exceed the sum of five thousand dollars the Supreme Court shall not review any question raised upon the record except such question of jurisdiction; such writ of error or appeal shall be taken and allowed under the same provisions of law as apply to other writs of error or appeals, except as provided in the next following section.

SEC. 2. That in cases of judgments or decrees mentioned in the first section of this Act, and heretofore rendered, where the period of limitation for taking writs of error or appeals in other cases has not expired, appeals or writs of error may be sued out at any time within one year after the passage of this Act."

The language of the Act is general and covers an order remanding a cause if the ground upon which the order is granted

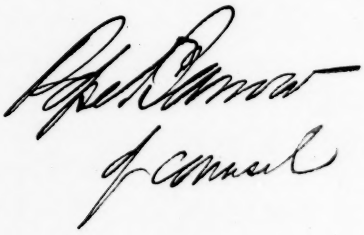
involves the jurisdiction of the Court. In a case in which the order was placed expressly and solely upon a want of jurisdiction, ignoring all other grounds, the only question left to be considered is whether or not the effect of it is final.. Whatever may be said of cases in which the order remanding was granted upon other grounds it seems to be a reasonable construction of this Act to hold that an order remanding a cause expressly upon the ground that the Court has no jurisdiction of the case, comes within its provisions. The right to have the decision reviewed is evidently intended to be granted. It is fair to conclude that it was the intention of Congress to leave the law where it was placed by the Act of 1887, except upon the sole question of jurisdiction, and the provisions of the Act of 1889 are made general so as to cover any decision involving the jurisdiction of the Court.

Under the Act of 1889 in cases in which the decision of the Circuit Court is in favor of the jurisdiction, it is easy to see how the judgment or decree might be final on the merits in the ordinary acceptation of the term, but in cases in which the decision was adverse to the jurisdiction of the Circuit Court it is difficult to see how any question could have been decided except that of jurisdiction. It must therefore have been comtemplated in framing the Act of 1889, in the use of the words "final judgment or decree" coupled with the condition that a question involving the jurisdiction of the Court should exist, that in all cases where the decision was adverse to the jurisdiction it should be considered so far final as to give the right to have it reviewed. If this was not true the Act would be meaningless and ineffectual except in cases in which the judgment or decree upon the question of jurisdiction was in favor of the jurisdiction. When the decision, as in this case, is adverse to the jurisdiction, ordinarily nothing else will have been decided, consequently if this is not final in the sense intended by the Aet of 1889 the strange conclusion would be reached that the Act has no application except in cases where the decision is in favor of the jurisdiction and in which the Court has gone on and rendered a final judgment or decree on the merits, in the ordinary acceptation of the term.

If this view of the Act of 1889 is sound, the decisions based upon the Act of 1887 have no application, at least their appli-

cation would be limited in the same way and to the same extent as if the Act of 1889 had expressly revived the right of appeal from orders remanding causes upon the ground of jurisdiction.

HOADLEY, LAUTERBACH & JOHNSON.
TAYLOR & HOOD.
BARROW & THOMAS.
For Appellant.



No. 1262. *October Term, 1889.*

Supreme Court of the United States.

The Richmond and Danville Railroad Company,
Appellant,

vs.

Nicholas Thouron *et al.*, Appellees.

Appeal from the Circuit Court of the United States, for the Eastern District of Tennessee.

BRIEF FOR APPELLEES ON THEIR MOTION TO DISMISS THE APPEAL FOR WANT OF JURISDICTION.

INGERSOLL & PEYTON,
CHARLES M. DA COSTA,
SAMUEL DICKSON,
For Appellees.

Allen, Lane & Scott, Printers, 229-231-233 South Fifth Street, Philadelphia.

Supreme Court of the United States.

The Richmond and Danville Railroad Company, Appellant,

vs.

Nicholas Thouron et al., *Appellees.*

October Term, 1889.

No. 1262.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TENNESSEE.

BRIEF FOR APPELLEES ON THEIR MOTION TO DISMISS THE APPEAL FOR WANT OF JURISDICTION.

THE CASE.

The complainants, some being citizens of the State of Pennsylvania, and the others aliens, on behalf of themselves and other stockholders of the East Tennessee, Virginia and Georgia Railway Company similarly situated, filed their bill in equity in the Chancery Court of Knoxville, Tenn., against the East Tennessee, Virginia and Georgia Railway Company, a corporation of Tennessee, the Richmond and Danville Railroad Company, and the Richmond and West Point Terminal Railway and Warehouse Company, both corporations of Virginia, and the various directors of these three corporations (some of such directors being citizens of the State of New York, some citizens of the State of Virginia, and one a citizen of the State of Tennessee), for the purpose of enjoining and

restraining the East Tennessee, Virginia and Georgia Railway Company from ratifying and approving a pretended lease of its property to the Richmond and Danville Company, to compel the latter company to restore to the possession of the East Tennessee, Virginia and Georgia Railway Company the property which had already been turned over by virtue of the alleged lease made by its directors alone without the consent of the stockholders, and also to prevent the West Point Terminal Company from voting on the shares of the East Tennessee, Virginia and Georgia Railway Company, owned by it, at the stockholders' meeting of such latter company called to ratify said lease.

The bill alleged that a majority of the board of directors of each of the three corporations were constituted of the same persons. (Record, pages 1–17.)

A motion was made for an injunction, which was fully heard on affidavits and arguments of counsel.

The State Court thereupon granted the motion for the injunction in so far as enjoining the East Tennessee, Virginia and Georgia Railway Company's stockholders from ratifying the alleged lease as being *ultra vires* and in violation of the statutes of the State of Tennessee. It refused, however, to inhibit the West Point Terminal Company from voting on the stock of the East Tennessee, Virginia and Georgia Railway Company held by it. (Record, page 40.)

After the decision on the injunction, and after the issuance and service of the same, one A. G. Sharp, a citizen of the State of Tennessee, without the knowledge or consent of the solicitors for the complainants, obtained an *ex parte* order in the State Court, making him co-complainant in the suit. (Record, page 55.)

Subsequent thereto the Richmond and Danville Company filed its answer (Record, page 50), and within a few days thereafter presented a petition and affidavit to the Circuit Court of the United States, for the Eastern District of Tennessee, for the purpose of obtaining a removal of the suit to said Circuit Court, in which petition they stated substantially that in the suit pending in the State Court there was a contro-

versy existing between a citizen of the State of Tennessee, namely, the said A. G. Sharp, and the Richmond and Danville Company, a corporation and citizen of the State of Virginia; that more than $2000, exclusive of costs, was involved in such controversy; and that by reason of local influence and prejudice they could not obtain justice in the court in which the suit was brought or in any other State court, to which, under the laws of Tennessee, it could be removed. (Record, page 56.) Thereupon the Circuit Court accepted such petition and ordered the removal of the suit from the State Court. (Record, pages 58, 59.)

The complainants then filed their motion, petition, and pleas to remand said cause. (Record, pages 61–65.) The questions arising thereon, and discussed before the Circuit Court on such motion stated briefly, were as follows:—

1. Is the case as presented upon the face of the petition and record one of which the Circuit Court could obtain jurisdiction by removal under the last clause of section 2 of the act of March 3d, 1887?

2. If it could, can it retain such jurisdiction, assuming the facts set up in the pleas to be true, *i. e.*:

(*a.*) That the market value of Mr. A. G. Sharp's stock did not exceed $500, although its par value was $5000;

(*b.*) That the local influence and prejudice alleged in the petition did not, as matter of fact, exist; or, in other words, is the existence thereof an issuable fact in the Circuit Court;

(*c.*) That Mr. Sharp was collusively joined as complainant for the purpose of creating, if possible, jurisdiction in the Circuit Court.

The court below, as will be seen from its opinion, which is reported in 38 Fed. Rep., 673, sustained the motion to remand on the ground first above indicated. It declined to permit the fact of local influence and prejudice to be controverted and made issuable in the Circuit Court. It refused to pass upon the question whether the statute required Mr. Sharp's individual interest to exceed the sum of $2000. It did not consider in its disposition of the motion the depositions taken

on behalf of the appellees to show the collusiveness of the joinder of Mr. Sharp as co-complainant, and ordered that they should not be copied into any transcript the clerk might make. (Record, pages 66, 67.)

In the order remanding the cause the defendant, the Richmond and Danville Company, prayed an appeal to this court, "which appeal is granted under the provisions of the act of February 25th, 1889, on the ground that the court has no jurisdiction of the cause." The appellees, deeming that the court, in allowing such appeal, had, inadvertently, overlooked the prohibition contained in the acts of March 3d, 1887, and August 13th, 1888, moved to vacate that portion of the order of remand which permitted the appeal on the ground that no appeal lies from such interlocutory order to this court. The motion, however, was denied by the court. (Record, pages 67, 68.)

It is but fair to the learned circuit judge to say that he probably gave a latitudinarian construction to the act of February 25th, 1889, in the hope that this court might be induced to decide speedily the questions involved in the motion to remand on some of which the courts of inferior jurisdiction differred greatly. The counsel for the appellees, however, consider that the question of jurisdiction is so plainly against the appeal that they feel it their duty to present it at the threshold and to refrain from argument on the questions involved and decided below, until authoritatively instructed by this court that an appeal lies to it, under existing statutes, from an order of a Circuit Court remanding a cause to the State Court.

They, therefore, submit this motion to discuss the appeal herein.

Brief.

The act of February 25th, 1889 (25 Statutes at Large, page 693), under which the appeal was allowed, does not confer on this court appellate jurisdiction to review an order of remand made by the Circuit Court.

Before referring to such act, a short review of the earlier legislation and of the decisions of this court thereon may not prove uninstructive.

I. Prior to the act of March 3d, 1875, no appeal or writ of error lay to this court to review an order made by the Circuit Court remanding a case to the State Court, because no statute specifically authorizing such appeal existed, and because such order was not considered a "final judgment or decree" from which alone appeals or writs of error could there be taken. The only remedy existing prior to the act of March, 1875, was by *mandamus* to compel the Circuit Court to entertain jurisdiction.

The decisions of this court are uniform on the subject.

In *Railroad Company* vs. *Wiswall* (23 Wall., 507), it appeared that after a removal from the State Court to the Circuit Court the latter had remanded the cause to the State Court, and to such order of remand a writ of error had been taken to this court. Thereupon a motion was made to discuss such writ of error on the ground "that the remand was not a 'final' judgment or decree, and that the proper proceeding was a motion for *mandamus*." The Chief Justice, speaking for the court, said (page 508): "The order of the Circuit Court remanding the cause to the State Court is not a 'final' judgment in the action, but a refusal to hear and decide. The remedy in such a case is by *mandamus* to compel action, and not by writ of error to review what has been done."

In Babbitt *vs.* Clark (103 U. S., 606), the Chief Justice, in speaking for the court, again said (pages 609, 610):—

"Before the act of 1875, c. 137 (18 Stat., 470), we held that an order by the Circuit Court remanding a cause was not such a final judgment or decree in a civil action as to give us jurisdiction for its review by writ of error or appeal. The appropriate remedy in such a case was then by *mandamus* to compel the Circuit Court to hear and decide."

Again in Turner *vs.* Farmers' Loan and Trust Company (106 U. S., 552), Mr. Justice Harlan, speaking for the court, said (page 555):—

"The act of 1875, for the first time in the legislation of Congress, declares that an order of the Circuit Court remanding a cause may, in advance of the final judgment or decree therein, may be reviewed by this court on writ of error or appeal, as

the case may require the one or the other mode to be pursued. Prior to that act the remedy, in that class of cases, was by *mandamus* to compel the Circuit Court to hear and determine the cause."

And, finally, in Morey *vs.* Lockhart (123 U. S., 56), the court, speaking by the chief justice, reiterated the rule in the following language (page 57) :—

"Before the act of March 3d, 1875, there could be no appeal from an order of the Circuit Court remanding a suit which had been removed, because such an order was not a final judgment or decree in the sense which authorizes an appeal or writ of error."

II. By the last paragraph of section 5 of the act of March 3d, 1875, it was provided that "the order of said Circuit Court dismissing or remanding said cause to the State Court shall be reviewable by the Supreme Court by writ of error or appeal as the case may be."

Reference need not, of course, be made to the numerous cases in which, under the authority here conferred, this court reviewed the orders of the Circuit Court refusing to remand or remanding causes to the State Court.

III. By section 6 of the act of March 3d, 1887 (24 Statutes at Large, 552, 555, the verbal errors occurring in such act being corrected by the act of August 13th, 1888, 25 Statutes at Large, 433), the jurisdiction conferred on this court by the last paragraph of section 5 of the act of March 3d, 1875, was expressly repealed. Besides, the last paragraph of section 2 of the act of 1887, also provided that "whenever any cause shall be removed from any State Court into any Circuit Court of the United States, and the Circuit Court shall decide that the cause was improperly removed, and order the same to be remanded to the State Court from whence it came, such remand shall be immediately carried into execution, *and no appeal or writ of error from the decision of the Circuit Court so remanding such cause shall be allowed.*"

These respective provisions of the act of 1887 were considered in this court at its October Term, 1887, in three cases, to wit:—

In Morey *vs.* Lockhart (123 U. S., 56), it was held that since the act of 1807 took effect this court had no power to review, on appeal or writ of error, an order of a Circuit Court remanding a cause to a State Court which had been removed and remanded *after* the passage of the act of 1887. The Chief Justice, after alluding to the language of the act, remarked (page 57):—

"It is difficult to see what more could be done to make the action of the Circuit Court final, for all the purposes of the removal, and not the subject of review in this court. First, it is declared that there shall be no appeal or writ of error in such a case, and then, to make the matter doubly sure, the only statute which ever gave the right of such appeal or writ of error is repealed."

Then came Wilkinson *vs.* Nebraska (*Ibid.*, 286), in which the doctrine enunciated in Morey *vs.* Lockhart, *supra*, was applied to a case which had been removed from the State Court before the act of 1887 took effect, but not remanded until *afterwards*. The Chief Justice, speaking on behalf of the court, said (page 288):—

"This provision" (*i. e.*, the last paragraph of section 2 of the act of 1887) "when taken in connection with the repeal by section 6 of the last paragraph of section 5 of the act of 1875, shows unmistakably an intention on the part of Congress to take away all appeals and writs of error to this court from orders thereafter made by circuit courts, remanding suits which had been removed from a State court, and this whether the suit was begun and the removal had before or after the act of 1887."

And in Sherman *vs.* Grinnell (*Ibid.*, 679), the rule was extended to a case where the suit was alike removed and remanded before the act of 1887 took effect. The Chief Justice, after alluding to the two previous decisions made at the same term, added (page 680):—

"Here, however, the question reaches one step further, and requires us to determine whether we can take jurisdiction on

appeal or writ of error if the order to remand was made whilst the act of March 3d, 1875, c. 137 (18 Stat. 470), was in force, but the writ of error was not brought until after that of March 3d, 1887, went into effect, and we are opinion that we cannot. This is the logical result of what has already been decided. Until the act of 1875 there was no such jurisdiction. (Railroad Co. *vs.* Wiswall, 23 Wall., 507.) The provisions of that act giving the jurisdiction was repealed by the act of 1887 without any reservation as to pending cases, the proviso in the repealing section having reference 'only to the jurisdiction of the Circuit Court and the disposition of the suit on its merits.' (Wilkinson *vs.* Nebraska, *ubi supra.*) As a consequence of this the repeal operated to take away jurisdiction in cases where the order to remand had been made but no appeal or writ of error taken, because 'if a law conferring jurisdiction is repealed without a reservation as to pending cases all such cases fall with the law.' (Railroad Co. *vs.* Grant, 98 U. S., 398, 401, and the cases there cited.) It follows that we have no jurisdiction of this writ of error, and it is accordingly dismissed."

Subsequently, and in the same term, a motion was made by the plaintiff in error for a *mandamus* to compel the Circuit Court to grant a rehearing of its order remanding the cause. This court refused to issue the *mandamus*. (*In re* Sherman, 124 U. S., 364.)

And, finally, at the October term, 1888, in Chicago, B. and Q. R. R. Co. *vs.* Gray (131 U. S., 396), the court reiterated the doctrine enunciated by it in Sherman *vs.* Grinnell, *supra.*

It is useful, too, to refer to Clark *vs.* Babbitt (103 U. S.), and to Morey *vs.* Lockhart (123 U. S.), as emphasizing again that an order remanding a cause is not in any just sense "a final judgment or decree in the action." In the former case one of the contentions was that under the act of March 3d, 1875, no appeal or writ of error would lie from an order remanding or refusing to remand unless the matter in dispute exceeded the sum of $5000. This court, however, resolved that contention in the negative, saying (103 U. S., page 610):—

"We think, also, this right of review has been given without regard to the pecuniary value of the matter in dispute.

There is no pecuniary limit fixed to our jurisdiction in the act of 1875 itself. Final judgments and decrees in the Circuit Courts in civil actions cannot ordinarily be brought here for review unless the value of the matter in dispute exceeds $5000 (Rev. Stat., Sects. 691, 692; 18 Stat., 315, c. 77, Sec. 3); *but an order of the Circuit Court remanding a removed suit to the State Court is in no just sense a final judgment or decree in the action. It simply fixes the court in which the parties shall go on with their litigation.*"

In Morey *vs.* Lockhart it was contended that notwithstanding the last paragraphs of sections 2 and 6 of the act of 1887 the appeal would lie under section 693 of the Revised Statutes on account of the certificate of the judges holding the court that their opinions were opposed on the question of remanding; but, again, this court refused to uphold this contention, saying (123 U. S., page 58):

"That section (*i. e.*, section 693) is as follows: 'Any final judgment or decree in any civil suit or proceeding before a circuit court, * * * wherein the said judges certify, as provided by law, that their opinions were opposed, * * * may be reviewed and affirmed, reversed or modified, by the Supreme Court on writ of error or appeal, according to the nature of the case, and subject to the provisions of law applicable to other writs of error or appeals in regard to bail and supersedeas.' But here there has been no judgment in the suit, and therefore this section does not apply. That was the ground on which an appeal was denied in Railroad Co. *vs.* Wiswall, *supra*, where it was said: 'The order of the Circuit Court remanding the cause to the State Court is not a 'final judgment' in the action, but a refusal to hear and decide.' No case can be brought up under section 693 until there has been a final judgment or decree in the suit."

To resume, this court has uniformly held:

1. That prior to the act of March 3d, 1875, no appeal or writ of error lay to this court from an order of the Circuit Court remanding a cause to the State Court, because such order was not made specifically appealable by any act of Congress, and because it was not a final judgment or decree from which

alone appeals or writs or error were permitted, but simply an order which only determined the court in which the case should proceed to final judgment or decree.

2. That the authority to entertain such appeals or writs of error conferred by section 5 of the act of March 3d, 1875, was absolutely taken away from this court by the last paragraphs of sections 2 and 6 of the act of March 3d, 1887, even as to cases which had been removed from and remanded to a State court prior to the passage of such act.

3. That it was difficult to see what more could be done than by the enactment of the last two paragraphs of section 2 of this act of March, 1887, to make the action of the Circuit Courts final, for all the purposes of the removal, and not the subject of review in this court.

Whether, in view of the plain language of such paragraphs and the interpretation so given to it by this court, a writ of *mandamus* would now lie, as it did prior to the act of March 3d, 1875, need not be discussed in this brief, for the decision of that point is not involved in this appeal.

IV. In the light of the foregoing review of the prior legislation and decisions of this court, there is no difficulty in reading aright the act of February 25th, 1889 (25 Stat. at Large, page 693), under which it is claimed that this appeal is authorized to be taken. The act is as follows:—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That in all cases where a final judgment or decree shall be rendered in a circuit court of the United States in which there shall have been a question involving the jurisdiction of the court, the party against whom the judgment or decree is rendered shall be entitled to an appeal or writ of error to the Supreme Court of the United States to review such judgment or decree without reference to the amount of the same; but in cases where the decree or judgment does not exceed the sum of five thousand dollars the Supreme Court shall not review any question raised upon the record except such question of jurisdiction;

such writ of error or appeal shall be taken and allowed under the same provisions of law as apply to other writs of error or appeals, except as provided in the next following section.

SEC. 2. That in cases of judgments or decrees mentioned in the first section of this act, and heretofore rendered, where the period of limitation for taking writs of error or appeals in other cases has not expired, appeals or writs of error may be sued out at any time within one year after the passage of this act.

It will be noted that throughout the act the expression "final judgment or decree" is used, and that the writs of error and appeals provided therein can only be taken from such final judgments or decrees; that is to say, it must be a case, first, where a final judgment or decree has been rendered in the circuit court; second, in which a question of the jurisdiction of such court is involved; third, then the party against whom such judgment or decree is rendered, can review such judgment or decree without reference to the amount involved; fourth, in case the judgment or decree does not exceed the sum of $5000 this court can only review the question of jurisdiction.

As this court had held, over and over again, prior to the passage of such act, that an order of remand was not a final judgment or decree, and applying to such act the elementary canon of construction that "words and phrases, the meaning of which, in a statute, have been ascertained by judicial interpretation, are, when used in a subsequent statute, to be understood in the same sense (Sewing Machine Cases, 18 Wall, 584, and cases cited; also, Bishop on Written Laws, sec. 97; Mason *v.* Fearson, 9 How., 248, 257; The Abbotsford, 98 U. S., 440–444; Maxwell on the Interpretation of Statutes, page 41); it would seem to follow conclusively that the act, under which alone this appeal purports to have been taken and allowed herein, does not, while authorizing writs of error or appeals from a final judgment or decree, confer any jurisdiction on this court to entertain an appeal or writ of error from an order remanding a cause to a State Court.

The act in question is couched not merely in perfectly plain

and intelligible language, but its intent and meaning are so apparent as not to need any explanation.

In conclusion, it is respectfully suggested that this court will not draw unto itself jurisdiction not plainly conferred on it, and which can only be supported by spelling out from language used in an act of Congress a meaning which this court had heretofore consistently held not to be conveyed by it.

Should, however, the views above expressed not prevail, then we would call the attention of the court to the necessity, in view of the crowded condition of the docket, and of the great delay that would occur in the hearing of appeals or writs of error from orders remanding or refusing to remand causes, of re-enacting a rule similar to the former thirty-second rule of this court, which, by reason of its limited language, fell with the repeal of the act of March 3d, 1875.

INGERSOLL & PEYTON,
CHARLES M. DA COSTA,
SAMUEL DICKSON,
For Appellees